

# SENATE BILL REPORT

## SB 5694

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As Passed Senate, February 2, 2022

**Title:** An act relating to recognizing Indian tribes as among the governmental entities with which the department of corrections may enter into agreements on matters to include the housing of inmates convicted in tribal court.

**Brief Description:** Recognizing Indian tribes as among the governmental entities with which the department of corrections may enter into agreements on matters to include the housing of inmates convicted in tribal court.

**Sponsors:** Senators Stanford, Robinson and Wilson, C..

**Brief History:**

**Committee Activity:** Human Services, Reentry & Rehabilitation: 1/18/22, 1/25/22 [DP].

**Floor Activity:** Passed Senate: 2/2/22, 47-0.

**Brief Summary of Bill**

- Allows the Department of Corrections to contract and enter into agreements with federally recognized Indian tribes for the care and commitment of inmates convicted in tribal court.

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### SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

**Majority Report:** Do pass.

Signed by Senators Wilson, C., Chair; Nguyen, Vice Chair; Gildon, Ranking Member; Dozier, McCune, Saldaña and Trudeau.

**Staff:** Kelsey-anne Fung (786-7479)

**Background:** Federally Recognized Tribes. A federally recognized tribe is an American Indian or Alaska Native tribal entity recognized as having a government-to-government

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relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation. Tribal sovereignty includes the right to establish their own form of government, determine membership requirements, enact legislation, and establish law enforcement and court systems. There are 574 federally recognized American Indian and Alaska Native tribes and villages, 29 of which are in Washington.

Tribal courts exert general jurisdiction over their tribal membership, as limited by the tribal code and constitution, and federal law. Few tribes have their own jails or juvenile detention facilities. Many tribes contract to use local county jail facilities, or they contract with other tribes that have jail facilities.

Government-to-Government Relationship. Washington State has agreements with federally recognized Indian tribes to facilitate government-to-government relations. Pursuant to the 1989 Centennial Accord executed between tribes and Washington State and 2012 legislation, state elected officials and agencies are required to, when establishing a government-to-government relationship with tribes:

- make reasonable efforts to collaborate with tribes in developing policies, agreements and programs affecting tribes;
- develop a consultation process for issues involving tribes;
- designate a tribal liaison who reports directly to the head of the agency;
- ensure that tribal liaisons and agency directors receive training through the Governor's Office of Indian Affairs or another provider that includes effective communication, collaboration, and cultural competency; and
- annually report to the Governor on activities involving tribes and implementation of these requirements.

Washington State Department of Corrections. The Washington State Department of Corrections (DOC) makes a reasonable effort to collaborate with Indian tribes in the development of policies, agreements, and program implementation that directly affects tribes. Per the Centennial Accord of 1989, and the 2012 legislation, DOC annually reports to the Governor's Office of Indian Affairs on agency activities completed the prior year that strengthen relations with tribal governments and enhance tribal communities. As of June 2021, 5.7 percent of DOC's incarcerated population, or 785 individuals, identify as American Indian or Alaska Native.

DOC is currently authorized to contract with and receive persons from another state, state agency, county, or federal jurisdiction. The DOC secretary has broad powers to enter into agreements with any federal agency, any other state, or any state agency or local government providing for the operation of any correctional facility or program for persons convicted of felonies or misdemeanors or for juveniles. All persons sentenced to prison by the authority of the United States or of any state or territory of the United States may be received by DOC and imprisoned in accordance with the sentence of the court in which the person was tried. The DOC secretary has authority to contract with the proper officers or agencies of the United States and of other states and territories of the United States relative

to the state's per diem rate for keeping the prisoner. The DOC secretary is prohibited from entering into any contract for the care or commitment of any prisoner of the federal government or any other state unless there is vacant space and unused facilities in state correctional facilities.

**Summary of Bill:** Federally recognized tribes are added among the governmental entities DOC is allowed to contract with or enter into agreements with for the care or commitment of inmates from other jurisdictions. DOC may receive and imprison a person sentenced to prison by the authority of a federally recognized tribe. The DOC secretary may enter into contracts with the proper officers or agencies of federally recognized tribes relative to the state's per diem rate for keeping the prisoner. The DOC secretary is prohibited from entering into any contract for the care or commitment of any prisoner of any federally recognized tribe unless there is vacant space and unused facilities in state correctional facilities. The definition of inmate is altered to include persons received from a federally recognized tribe.

**Appropriation:** None.

**Fiscal Note:** Available.

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

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

**Staff Summary of Public Testimony:** PRO: Inmates convicted in tribal courts do not have appropriate facilities if they are serving longer sentences. There are concerns about people being held in county jails for longer periods of time and those facilities are not intended to be for persons with multi-year sentences. By allowing tribes to contract with DOC for the use of their facilities, the bill will allow tribal members to have access to better, more appropriate programming while serving their sentences and reentry supports.

This simple bill will radically improve and positively impact people's lives. Since 2012, the Tulalip Tribes has operated enhanced tribal court sentencing authority under federal law and the tribal court can sentence individuals up to three years per charge and nine years per case. Inmates convicted in tribal court currently do not have any options but to serve their sentence in county jails, but county jails were not intended to house inmates longer than one year and a day. By recognizing tribes as among the governmental entities that DOC can contract with, this bill will significantly improve inmate circumstances by creating opportunities for them to access long-term treatment, continuing education programs, Native American culture and spiritual practices, outdoor recreation, and reentry programs while reducing recidivism. The current system is not working and this will give inmates from tribal courts access to rehabilitation programs, which will not only help the tribes but the whole state.

**Persons Testifying:** PRO: Senator Derek Stanford, Prime Sponsor; Misty Napeahi, Tulalip Tribes of WA.

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