
SUBSTITUTE SENATE BILL 5770

State of Washington 65th Legislature 2017 Regular Session

By Senate Human Services, Mental Health & Housing (originally sponsored by Senators McCoy, Darneille, Saldaña, and Hunt)

READ FIRST TIME 02/17/17.

1 AN ACT Relating to transfer of jurisdiction from a tribe in
2 dependency cases involving Indian children; and amending RCW
3 13.38.080.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 13.38.080 and 2011 c 309 s 8 are each amended to
6 read as follows:

7 (1) In any proceeding for the foster care placement of, or
8 termination of parental rights to, an Indian child who is not
9 domiciled or residing within the reservation of the Indian child's
10 tribe, the court shall, in the absence of good cause to the contrary,
11 transfer the proceeding to the jurisdiction of the Indian child's
12 tribe, upon the motion of any of the following persons:

13 (a) Either of the child's parents;

14 (b) The child's Indian custodian;

15 (c) The child's tribe; or

16 (d) The child, if age twelve or older.

17 The transfer shall be subject to declination by the tribe. The tribe
18 shall have seventy-five days to affirmatively respond to a motion or
19 order transferring jurisdiction to the tribal court. A failure of the
20 tribe to respond within the seventy-five day period shall be
21 construed as a declination to accept transfer of the case.

1 (2) If the child's tribe has not formally intervened, the moving
2 party shall serve a copy of the motion and all supporting documents
3 on the tribal court to which the moving party seeks transfer.

4 (3) If either of the Indian child's parents objects to transfer
5 of the proceeding to the Indian child's tribe, the court shall not
6 transfer the proceeding.

7 (4) Following entry of an order transferring jurisdiction to the
8 Indian child's tribe:

9 (a) Upon receipt of an order from a tribal court accepting
10 jurisdiction, the state court shall dismiss the child custody
11 proceeding without prejudice.

12 (b) Pending receipt of such tribal court order, the state court
13 may conduct additional hearings and enter orders which strictly
14 comply with the requirements of the federal Indian child welfare act
15 and this chapter. The state court shall not enter a final order in
16 any child custody proceeding, except an order dismissing the
17 proceeding and returning the Indian child to the care of the parent
18 or Indian custodian from whose care the child was removed, while
19 awaiting receipt of a tribal court order accepting jurisdiction, or
20 in the absence of a tribal court order or other formal written
21 declination of jurisdiction.

22 (c) If the Indian child's tribe declines jurisdiction, the state
23 court shall enter an order vacating the order transferring
24 jurisdiction and proceed with adjudication of the child custody
25 matter in strict compliance with the federal Indian child welfare
26 act, this chapter, and any applicable tribal-state agreement.

27 (5) If a tribal court orders transfer of jurisdiction from the
28 tribe, the state court shall hold a hearing to determine if accepting
29 jurisdiction is consistent with P.L. 95-608, RCW 13.34.240 and
30 13.38.100, civil rule 82.5, and any other applicable state or federal
31 laws. The tribal court shall transfer a copy of the entire court file
32 to the state court for its consideration. If jurisdiction is accepted
33 the state court shall determine whether the child will be treated as
34 dependent under RCW 13.34.030(6).

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