

SENATE BILL REPORT

SB 5770

As Reported by Senate Committee On:
Human Services, Mental Health & Housing, February 15, 2017

Title: An act relating to transfer of jurisdiction from a tribe in dependency cases involving Indian children.

Brief Description: Concerning transfer of jurisdiction from a tribe in dependency cases involving Indian children.

Sponsors: Senators McCoy, Darneille, Saldaña and Hunt.

Brief History:

Committee Activity: Human Services, Mental Health & Housing: 2/13/17, 2/15/17 [DPS].

Brief Summary of Substitute Bill

- Requires the state to accept and assume jurisdiction of a child in a dependency proceeding when ordered to do so by a tribal court when a tribal court determines it no longer has jurisdiction over a child.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Majority Report: That Substitute Senate Bill No. 5770 be substituted therefor, and the substitute bill do pass.

Signed by Senators O'Ban, Chair; Miloscia, Vice Chair; Darneille, Ranking Minority Member; Carlyle, Hunt, Padden and Walsh.

Staff: Alison Mendiola (786-7444)

Background: Indian Child Welfare Act. The Indian Child Welfare Act (ICWA) is a federal law passed in 1978. ICWA was passed in response to the high number of Indian children being removed from their homes by both public and private agencies. The intent of Congress under ICWA was to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.” (25 U.S.C. § 1902) ICWA sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of, or eligible for membership in, a federally recognized tribe. These requirements apply to proceedings under chapters 13.32A, 13.34, and 26.33 RCW.

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.

Indian children involved in state child custody proceedings are covered by ICWA. A person may define their identity as Indian, but in order for ICWA to apply, the involved child must be an Indian child as defined by the law. ICWA defines an Indian child as “any unmarried person who is under age 18 and is either (1) a member of an Indian tribe, or (2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.” (25 U.S.C. § 1903) Under federal law, individual tribes have the right to determine eligibility, membership, or both. However, in order for ICWA to apply, the child must be a member of, or eligible for membership in, a federally recognized tribe. ICWA does not apply to divorce proceedings, intra-family disputes, juvenile offender proceedings, or cases under tribal court jurisdiction.

All tribes have the right to determine who is a member of their tribe; different tribes have different requirements for eligibility.

The child's tribe must have exclusive jurisdiction over the child custody proceeding involving the Indian child who resides on a reservation unless the tribe has consented to state's concurrent jurisdiction, or the tribe expressly declined jurisdiction or the state is exercising emergency jurisdiction. If the court or any party knows or has reason to know that a child is or may be an Indian child, the court or party must notify the parent or Indian custodian and the child's tribe, by registered mail, of any pending proceedings and their right of intervention. In a child custody proceeding involving an Indian child who is not a resident of the reservation and not a ward of the tribal court, the court must transfer the case to tribal court unless either parent objects or there is good cause not to transfer the case. The tribe may decline jurisdiction.

In 2011, the Legislature adopted a substantially similar state version of the Federal ICWA.

Child Protective Services in Washington. Child Protective Services (CPS) are services provided by the Department of Social and Health Services (DSHS) designed to protect children from child abuse and neglect, safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. Investigations may be conducted regardless of the location of the alleged abuse or neglect. CPS includes (1) a referral to services to ameliorate conditions that endanger the welfare of children; (2) the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect; and (3) services to children to ensure that each child has a permanent home.

Duty to Investigate. A number of professionals who regularly work with children are mandated reporters in Washington State. If they have reasonable cause to suspect that a child has been abused or neglected, they must report that fact to DSHS or law enforcement. DSHS must investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation or that present an imminent risk of serious harm. On the basis of the findings of such investigation, DSHS or law enforcement must offer child welfare services in relation to the problem to such parents, legal custodian or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court or another community agency. An investigation is not required of non-accidental injuries that are clearly not the result of a lack

of care or supervision by the child's parents, legal custodian, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the DSHS must notify the appropriate law enforcement agency.

Dependency Proceedings. DSHS or any person may file a petition in court to determine if a child should be a dependent of the state due to abuse, neglect, or abandonment, or because there is no parent or custodian capable of caring for the child. If the court determines the child is dependent, the court conducts periodic reviews and makes determinations about the child's placement and the parent's progress in correcting parental deficiencies. The court, under certain circumstances, may order the filing of a petition for the termination of parental rights.

Summary of Bill (First Substitute): Related to a dependency proceeding, if a tribal court orders the transfer of jurisdiction from the tribe to the state, the state court will hold a hearing to determine if the court can accept jurisdiction, consistent with applicable laws. The tribal court will transfer a copy of the entire file to the state court for its consideration. If jurisdiction is accepted, the state court will determine whether the child will be treated as a dependent under RCW 13.34.030(6).

EFFECT OF CHANGES MADE BY HUMAN SERVICES, MENTAL HEALTH & HOUSING COMMITTEE (First Substitute): Related to a dependency proceeding, if a tribal court orders the transfer of jurisdiction from the tribe to the state, the state court will hold a hearing to determine if the court can accept jurisdiction, consistent with applicable laws. The tribal court will transfer a copy of the entire file to the state court for its consideration. If jurisdiction is accepted, the state court will determine whether the child will be treated as a dependent under RCW 13.34.030(6).

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 bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill addresses this issue of transferring a child to state custody—from a tribal court. We want to prevent a baby Veronica situation and make sure that everything is done properly. If child is subject to tribal custody—then determined not to be Native, the custody of that case should be transferred to the state. However, the state says their screening process is not the same and therefore it can be difficult to transfer a case from tribal court to state court. The problem occurs when a case doesn't screen in for state jurisdiction. We want kids to be safe and for there to be no blood on anyone's hands.

OTHER: Each tribe has their own process. Parents have a fundamental liberty interest—there must be a finding of child abuse or neglect which is legally problematic for the state. This bill doesn't contemplate the reverse—a transfer of custody from the state court to a tribal

court. The state does give full faith and credit, it requires several things. In a specific instance, the tribe did not have jurisdiction. The state has to start the case over again; the case was referred but it didn't meet the standards for Child Protective Services. We have suggested language to address this concern.

Persons Testifying: PRO: Senator John McCoy, Prime Sponsor; Khia Grinnell, Tulalip Tribes.

OTHER: Jennifer Strus, DSHS.

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