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**SENATE BILL 5081**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senator McCoy

AN ACT Relating to creating the Indian fugitive extradition act; adding a new chapter to Title 10 RCW; and prescribing penalties.

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

NEW SECTION. **Sec.**  (1) If any Indian charged with an offense by a federally recognized Indian tribe is a fugitive from justice from such tribe and is found within this state, he or she may be extradited to the tribe from which he or she fled, pursuant to the provisions of this chapter.

(2) Any non-Indian charged with an offense by a federally recognized Indian tribe pursuant to the jurisdiction conferred by 25 U.S.C. Sec. 1304 who is a fugitive from justice from such tribe and is found within this state, may be extradited to the tribe from which he or she fled pursuant to the provisions of this chapter.

NEW SECTION. **Sec.**  (1) No extradition is available under the provisions of this chapter unless both the governor and the Indian tribe involved have mutually and formally entered into a compact that covers mutual legal assistance in criminal matters. The governor may delegate the authority to negotiate a mutual legal assistance in criminal matters compact to the attorney general.

(2) Any mutual legal assistance in a criminal matters compact must:

(a) Provide for taking the testimony or statements of persons;

(b) Provide a means for obtaining documents, records, and items of evidence;

(c) Provide a procedure for locating or identifying persons or items;

(d) Address the serving of documents;

(e) Provide a means for transferring persons in custody for testimony or other purposes;

(f) Include provisions for executing requests for searches and seizures; and

(g) Provide for any other form of assistance not prohibited by the laws of the Indian tribe or the state of Washington.

(3) No compact may diminish or reduce the state's current right, power, or privilege to execute arrest or search warrants or to enforce legal process within any reservation.

NEW SECTION. **Sec.**  No demand for extradition of an Indian charged with an offense by an Indian tribe in this state or of a non-Indian charged with an offense by an Indian tribe in this state pursuant to the grant of jurisdiction in 25 U.S.C. Sec. 1304 may be recognized by this state unless the provisions of section 2 of this act have been met and a written request for extradition is received by the attorney general. The request under this section must state that the accused person was present on the demanding reservation at the time of the commission of the alleged crime and that thereafter he or she fled from the reservation to avoid prosecution. The request must be accompanied by a copy of any arrest warrant issued for the individual, by a copy of any judgment of conviction or sentence imposed, if applicable, and by a sworn statement from a reservation judicial officer that the person claimed has escaped or evaded confinement, or broken the terms of his probation, bail, or parole, and that the individual has been charged with committing a specific offense under the laws of the tribe. The copy of the arrest warrant, charging document, affidavit, judgment of conviction, or sentence must be certified or authenticated by the tribal authority responsible for maintaining the records.

NEW SECTION. **Sec.**  If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the attorney general, in his or her discretion, may either commence extradition proceedings on tribal demand or hold the person until he or she has been tried and discharged or convicted and punished in this state. The attorney general must give great weight to the victim's opinion and to the prosecuting authority that has instituted the criminal prosecution against such person in deciding whether to immediately commence extradition proceedings.

NEW SECTION. **Sec.**  The attorney general must submit the documents specified in section 3 of this act to any judge of a court of record. If the superior court judge decides that the extradition demand should be complied with, he or she must issue a warrant of arrest directed to any law enforcement officer.

NEW SECTION. **Sec.**  Extradition proceedings under this chapter shall be conducted between the respective superior court presiding judge and Indian tribal court judge or magistrate involved in the request for extradition.

NEW SECTION. **Sec.**  The superior court judge may call upon the attorney general to investigate the demand for extradition and to report to him or her the situation and circumstances of the person so demanded, and whether the person so demanded ought to be surrendered.

NEW SECTION. **Sec.**  The guilt or innocence of an accused as to the crime of which he or she is charged may not be inquired into by a superior court judge in any extradition proceeding under this chapter except as it may be necessary to identify the person held as being the person charged with the crime.

NEW SECTION. **Sec.**  The formal requirements of chapter 10.88 RCW relating to the governor of the state of Washington, do not apply to extradition proceedings under this chapter.

NEW SECTION. **Sec.**  No person arrested on the judge's warrant may be delivered to an agent appointed by the demanding tribe to receive him or her until the person is first taken before a judge of a court of record in this state, who must inform him or her of the demand for his or her surrender and of the crime with which he or she is charged, and that he or she has the right to demand and procure legal counsel. Any person violating this section is guilty of a gross misdemeanor.

NEW SECTION. **Sec.**  (1) A prisoner may test the legality of his or her arrest by applying for a writ of habeas corpus pursuant to chapter 7.36 RCW. When such a writ is applied for, notice thereof, and of the time and place of hearing thereon, must be given to the attorney general and to the agent of the demanding tribe.

(2) A habeas corpus proceeding under this section is limited to determining whether the following prerequisites to extradition are met:

(a) The extradition documents on their face are in order;

(b) The petition has been charged with a crime in the demanding tribe;

(c) The petitioner is the person named in the request for extradition; and

(d) The petitioner is a fugitive.

NEW SECTION. **Sec.**  Formal extradition proceedings under this chapter may be waived if the person making the waiver, knowingly, and in the presence of any judge of a court of record, signs a statement that he or she consents to his or her return to the demanding authority. However, before such waiver may be executed, it is the duty of such judge to inform the person of his or her rights and inform him or her of the procedures available under chapter 7.36 RCW.

NEW SECTION. **Sec.**  The law enforcement officer or person executing the judge's warrant of arrest, or the agent of the demanding tribe to whom the prisoner may have been delivered may, if necessary, confine the prisoner in the jail of any county through which he or she may pass, and the keeper of such jail must receive and safely keep the prisoner until the law enforcement officer or person having charge of him or her is ready to proceed on his or her route. The state must compensate the county for the expense of keeping the prisoner. The compact required by section 2 of this act may include provisions governing reimbursement of these expenses by the demanding tribe.

NEW SECTION. **Sec.**  Nothing in this chapter may be deemed to constitute a waiver by this state of its right, power, or privilege to try such demanded person for crime committed within this state, or of its right, power, or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for any crime committed within this state, nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges, or jurisdiction in any way whatsoever.

NEW SECTION. **Sec.**  Sections 1 through 14 of this act are known and may be cited as the Indian fugitive extradition act.

NEW SECTION. **Sec.**  Sections 1 through 14 of this act constitute a new chapter in Title 10 RCW.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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