
SENATE BILL 5081

State of Washington

66th Legislature

2019 Regular Session

By Senator McCoy

Prefiled 01/04/19.

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

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

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

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

14 NEW SECTION. **Sec. 2.** (1) No extradition is available under the
15 provisions of this chapter unless both the governor and the Indian
16 tribe involved have mutually and formally entered into a compact that
17 covers mutual legal assistance in criminal matters. The governor may
18 delegate the authority to negotiate a mutual legal assistance in
19 criminal matters compact to the attorney general.

- 1 (2) Any mutual legal assistance in a criminal matters compact
2 must:
- 3 (a) Provide for taking the testimony or statements of persons;
4 (b) Provide a means for obtaining documents, records, and items
5 of evidence;
6 (c) Provide a procedure for locating or identifying persons or
7 items;
8 (d) Address the serving of documents;
9 (e) Provide a means for transferring persons in custody for
10 testimony or other purposes;
11 (f) Include provisions for executing requests for searches and
12 seizures; and
13 (g) Provide for any other form of assistance not prohibited by
14 the laws of the Indian tribe or the state of Washington.
- 15 (3) No compact may diminish or reduce the state's current right,
16 power, or privilege to execute arrest or search warrants or to
17 enforce legal process within any reservation.

18 NEW SECTION. **Sec. 3.** No demand for extradition of an Indian
19 charged with an offense by an Indian tribe in this state or of a non-
20 Indian charged with an offense by an Indian tribe in this state
21 pursuant to the grant of jurisdiction in 25 U.S.C. Sec. 1304 may be
22 recognized by this state unless the provisions of section 2 of this
23 act have been met and a written request for extradition is received
24 by the attorney general. The request under this section must state
25 that the accused person was present on the demanding reservation at
26 the time of the commission of the alleged crime and that thereafter
27 he or she fled from the reservation to avoid prosecution. The request
28 must be accompanied by a copy of any arrest warrant issued for the
29 individual, by a copy of any judgment of conviction or sentence
30 imposed, if applicable, and by a sworn statement from a reservation
31 judicial officer that the person claimed has escaped or evaded
32 confinement, or broken the terms of his probation, bail, or parole,
33 and that the individual has been charged with committing a specific
34 offense under the laws of the tribe. The copy of the arrest warrant,
35 charging document, affidavit, judgment of conviction, or sentence
36 must be certified or authenticated by the tribal authority
37 responsible for maintaining the records.

1 NEW SECTION. **Sec. 4.** If a criminal prosecution has been
2 instituted against such person under the laws of this state and is
3 still pending, the attorney general, in his or her discretion, may
4 either commence extradition proceedings on tribal demand or hold the
5 person until he or she has been tried and discharged or convicted and
6 punished in this state. The attorney general must give great weight
7 to the victim's opinion and to the prosecuting authority that has
8 instituted the criminal prosecution against such person in deciding
9 whether to immediately commence extradition proceedings.

10 NEW SECTION. **Sec. 5.** The attorney general must submit the
11 documents specified in section 3 of this act to any judge of a court
12 of record. If the superior court judge decides that the extradition
13 demand should be complied with, he or she must issue a warrant of
14 arrest directed to any law enforcement officer.

15 NEW SECTION. **Sec. 6.** Extradition proceedings under this chapter
16 shall be conducted between the respective superior court presiding
17 judge and Indian tribal court judge or magistrate involved in the
18 request for extradition.

19 NEW SECTION. **Sec. 7.** The superior court judge may call upon the
20 attorney general to investigate the demand for extradition and to
21 report to him or her the situation and circumstances of the person so
22 demanded, and whether the person so demanded ought to be surrendered.

23 NEW SECTION. **Sec. 8.** The guilt or innocence of an accused as to
24 the crime of which he or she is charged may not be inquired into by a
25 superior court judge in any extradition proceeding under this chapter
26 except as it may be necessary to identify the person held as being
27 the person charged with the crime.

28 NEW SECTION. **Sec. 9.** The formal requirements of chapter 10.88
29 RCW relating to the governor of the state of Washington, do not apply
30 to extradition proceedings under this chapter.

31 NEW SECTION. **Sec. 10.** No person arrested on the judge's warrant
32 may be delivered to an agent appointed by the demanding tribe to
33 receive him or her until the person is first taken before a judge of
34 a court of record in this state, who must inform him or her of the

1 demand for his or her surrender and of the crime with which he or she
2 is charged, and that he or she has the right to demand and procure
3 legal counsel. Any person violating this section is guilty of a gross
4 misdemeanor.

5 NEW SECTION. **Sec. 11.** (1) A prisoner may test the legality of
6 his or her arrest by applying for a writ of habeas corpus pursuant to
7 chapter 7.36 RCW. When such a writ is applied for, notice thereof,
8 and of the time and place of hearing thereon, must be given to the
9 attorney general and to the agent of the demanding tribe.

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

- 13 (a) The extradition documents on their face are in order;
- 14 (b) The petitioner has been charged with a crime in the demanding
15 tribe;
- 16 (c) The petitioner is the person named in the request for
17 extradition; and
- 18 (d) The petitioner is a fugitive.

19 NEW SECTION. **Sec. 12.** Formal extradition proceedings under this
20 chapter may be waived if the person making the waiver, knowingly, and
21 in the presence of any judge of a court of record, signs a statement
22 that he or she consents to his or her return to the demanding
23 authority. However, before such waiver may be executed, it is the
24 duty of such judge to inform the person of his or her rights and
25 inform him or her of the procedures available under chapter 7.36 RCW.

26 NEW SECTION. **Sec. 13.** The law enforcement officer or person
27 executing the judge's warrant of arrest, or the agent of the
28 demanding tribe to whom the prisoner may have been delivered may, if
29 necessary, confine the prisoner in the jail of any county through
30 which he or she may pass, and the keeper of such jail must receive
31 and safely keep the prisoner until the law enforcement officer or
32 person having charge of him or her is ready to proceed on his or her
33 route. The state must compensate the county for the expense of
34 keeping the prisoner. The compact required by section 2 of this act
35 may include provisions governing reimbursement of these expenses by
36 the demanding tribe.

1 NEW SECTION. **Sec. 14.** Nothing in this chapter may be deemed to
2 constitute a waiver by this state of its right, power, or privilege
3 to try such demanded person for crime committed within this state, or
4 of its right, power, or privilege to regain custody of such person by
5 extradition proceedings or otherwise for the purpose of trial,
6 sentence, or punishment for any crime committed within this state,
7 nor shall any proceedings had under this chapter which result in, or
8 fail to result in, extradition be deemed a waiver by this state of
9 any of its rights, privileges, or jurisdiction in any way whatsoever.

10 NEW SECTION. **Sec. 15.** Sections 1 through 14 of this act are
11 known and may be cited as the Indian fugitive extradition act.

12 NEW SECTION. **Sec. 16.** Sections 1 through 14 of this act
13 constitute a new chapter in Title 10 RCW.

14 NEW SECTION. **Sec. 17.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

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