

SSB 6146 - H COMM AMD

By Committee on Community Safety, Justice, & Reentry

ADOPTED AS AMENDED 02/28/2024

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature recognizes that the 29
4 federally recognized Indian tribes with territory inside the state of
5 Washington have a shared interest with the state in public safety,
6 and that continued and expanded cooperation with tribal justice
7 systems will promote that interest. The legislature also recognizes
8 that tribes have, for decades, agreed by treaty and through practice
9 not to shelter or conceal those individuals who violate state law and
10 to surrender them to the state for prosecution. In the interests of
11 public safety and partnership, it is therefore the intent of the
12 legislature to create uniform processes by which the state may
13 consistently reciprocate with tribes the return of those individuals
14 who violate tribal law and seek to avoid tribal justice systems by
15 leaving tribal jurisdiction.

16 The legislature further recognizes it is a constitutional
17 imperative that individuals alleged to have violated criminal laws
18 are afforded the fullest protections of due process including, but
19 not limited to: (1) The right to effective assistance of counsel at
20 least equal to that guaranteed by the United States Constitution; (2)
21 the right of an indigent defendant to the assistance of a licensed
22 defense attorney, at the expense of the tribal government; (3) the
23 right to a criminal proceeding presided over by a judge who is
24 licensed to practice law and has sufficient legal training; (4) the
25 right to have access, prior to being charged, to the tribe's criminal
26 laws, rules of evidence, and rules of criminal procedure; and (5) the
27 right to a record of the criminal proceeding, including an audio or
28 other recording of the trial proceeding. The legislature finds that
29 numerous federally recognized tribes with territory inside the state
30 have systems and processes recognized by the federal government as
31 providing due process to defendants at least equal to those required

1 by the United States Constitution. The legislature also finds that
2 all defendants in tribal courts have the right to petition for a writ
3 of habeas corpus.

4 The legislature additionally recognizes the importance of
5 establishing clear statutory duties when directing peace officers of
6 this state to effectuate new aspects of their work. It is the intent
7 of the legislature that this act set forth procedures by which peace
8 officers and correctional staff of this state must recognize and
9 effectuate tribal arrest warrants.

10 Therefore, the legislature declares the purpose of this act is to
11 expand cross jurisdictional cooperation so that fugitives from tribal
12 courts cannot evade justice by remaining off reservation in
13 Washington's counties and cities, while ensuring that defendants
14 receive the fullest due process protections.

15 NEW SECTION. **Sec. 2.** The definitions in this section apply
16 throughout this chapter unless the context clearly requires
17 otherwise.

18 (1) "Noncertified tribe" means a federally recognized tribe
19 located within the borders of the state of Washington that is
20 requesting that a tribal fugitive be surrendered to the duly
21 authorized agent of the tribe, but has not received approval to
22 exercise jurisdiction under the tribal law and order act of 2010,
23 section 234, codified at 25 U.S.C. Sec. 1302, and which has agreed by
24 treaty or practice not to shelter or conceal offenders against the
25 laws of the state of Washington but to deliver them up to state
26 authorities for prosecution.

27 (2) "Certified tribe" means a federally recognized tribe located
28 within the borders of the state of Washington that (a) may impose a
29 term of imprisonment of greater than one year, or a fine greater than
30 \$5,000, or both, pursuant to the tribal law and order act of 2010,
31 section 234, codified at 25 U.S.C. Sec. 1302; and (b) has agreed not
32 to shelter or conceal offenders against the laws of the state of
33 Washington but to deliver them up to state authorities for
34 prosecution.

35 (3) "Peace officer" has the same meaning as in RCW 10.93.020(4).

36 (4) "Place of detention" means a jail as defined in RCW
37 70.48.020, a correctional facility as defined in RCW 72.09.015, and
38 any similar facility contracted by a city or county.

1 (5) "Tribal court judge" includes every judicial officer
2 authorized alone or with others, to hold or preside over the criminal
3 court of a certified tribe or noncertified tribe.

4 (6) "Tribal fugitive" or "fugitive" means any person who is
5 subject to tribal court criminal jurisdiction, committed an alleged
6 crime under the tribal code, and thereafter fled tribal jurisdiction,
7 including by escaping or evading confinement, breaking the terms of
8 their probation, bail, or parole, or absenting themselves from the
9 jurisdiction of the tribal court.

10 (7) "Tribal police officer" has the same meaning as in RCW
11 10.92.010.

12 NEW SECTION. **Sec. 3.** A certified tribe must provide
13 certification of section 2 (2)(a) and (b) of this act, signed by the
14 tribe's judicial officer and chief legal counsel, to the office of
15 the attorney general. The office of the attorney general shall
16 receive the certification documentation indicating that the tribe
17 meets the requirements of the tribal law and order act of 2010
18 section 234, codified at 25 U.S.C. Sec. 1302, and review the
19 documentation to confirm that it is complete according to the
20 information provided in the documentation. The office of the attorney
21 general shall be immune from liability arising out of the performance
22 of duties under this section, except their intentional or willful
23 misconduct.

24 I. PROCEDURE FOR TRIBAL WARRANTS OF NONCERTIFIED TRIBES

25 NEW SECTION. **Sec. 4.** A place of detention shall provide notice
26 to the tribal law enforcement within the jurisdiction of a
27 noncertified tribe who issued an arrest warrant for a tribal fugitive
28 as soon as practicable after learning that the tribal fugitive is a
29 prisoner in the place of detention. The notice shall include the
30 reason for the detention and the anticipated date of release, if
31 known.

32 NEW SECTION. **Sec. 5.** The noncertified tribe whose court issued
33 the warrant of arrest may demand the extradition of the tribal
34 fugitive from a place of detention. The demand will be recognized if
35 in writing, it alleges that the person is a tribal fugitive, the
36 tribal court has jurisdiction, and is accompanied by either:

1 (1) A copy of the complaint, information, or other charging
2 document supported by affidavit of the tribe having jurisdiction of
3 the crime;

4 (2) A copy of an affidavit made before an authorized
5 representative of the tribal court, together with a copy of any
6 warrant which was issued thereupon; or

7 (3) A copy of a judgment of conviction or of a sentence imposed
8 in execution thereof.

9 NEW SECTION. **Sec. 6.** If a criminal prosecution has been
10 instituted against a tribal fugitive under the laws of this state or
11 any political subdivision thereof and is still pending, extradition
12 on a tribal court request under sections 4 through 10 of this act
13 shall be placed on hold until the tribal fugitive's release from a
14 place of detention, unless otherwise agreed upon in any given case.

15 NEW SECTION. **Sec. 7.** (1) The attorney general or prosecuting
16 attorney shall submit all applicable documents specified in section 4
17 of this act to a superior court judge in this state along with a
18 motion for an order of surrender. The motion for an order of
19 surrender shall be served upon the person whose extradition is
20 demanded.

21 (2) A person who is served with a motion for an order of
22 surrender shall be taken before a superior court judge in this state
23 the next judicial day. The judge shall inform the person of the
24 demand made for the person's surrender and the underlying reason for
25 the demand, and that the person has the right to demand and procure
26 legal counsel.

27 (3) The person whose return is demanded may, in the presence of
28 any superior court judge, sign a statement that the person consents
29 to his or her return to the noncertified tribe. However, before such
30 waiver may be executed, it shall be the duty of such judge to inform
31 the person of his or her right to test the legality of the
32 extradition request before an order of surrender may be issued.

33 (4) Any hearing to test the legality of the extradition request
34 shall occur within three judicial days, excluding weekends and
35 holidays, of the person receiving notice of the motion for an order
36 of surrender. The hearing is limited to determining:

37 (a) Whether the person has been charged with or convicted of a
38 crime by the noncertified tribe;

1 (b) Whether the person before the court is the person named in
2 the request for extradition; and

3 (c) Whether the person is a fugitive.

4 (5) The guilt or innocence of the person as to the crime of which
5 the person is charged may not be inquired into by a superior court
6 judge except as it may be necessary to identify the person held as
7 being the person charged with the crime.

8 (6) If the superior court judge determines that the requirements
9 of subsection (4) of this section and section 4 of this act have been
10 met, the judge shall issue an order of surrender to the noncertified
11 tribe. If the noncertified tribe does not take custody of the person
12 pursuant to the order of surrender on the date the person is
13 scheduled to be released from the place of detention or within 48
14 hours of the entry of the order of surrender, whichever is later, the
15 person may be released from custody with bail conditioned on the
16 person's appearance before the court at a time specified for his or
17 her surrender to the noncertified tribe or for the vacation of the
18 order of surrender.

19 NEW SECTION. **Sec. 8.** Subject to the provisions of section 6 of
20 this act, a place of detention shall deliver or make available a
21 person in custody to the noncertified tribe without a judicial order
22 of surrender provided that:

23 (1) Such person is alleged to have broken the terms of his or her
24 probation, parole, bail, or any other release of the noncertified
25 tribe; and

26 (2) The place of detention has received from the noncertified
27 tribe an authenticated copy of a prior waiver of extradition signed
28 by such person as a term of his or her probation, parole, bail, or
29 any other release of the noncertified tribe and photographs or
30 fingerprints or other evidence properly identifying the person as the
31 person who signed the waiver.

32 NEW SECTION. **Sec. 9.** (1) A noncertified tribe that requests
33 extradition pursuant to this act is responsible to arrange the
34 transportation for the tribal fugitive from the place of detention to
35 the tribal court or detention facility. The detention facility and
36 noncertified tribe are encouraged to select the means of transport
37 that best protects public safety after considering available
38 resources. At the request of a noncertified tribe, a city, county, or

1 the governor must engage in good faith efforts to negotiate an
2 agreement to effectuate this subsection.

3 (2) A tribal court representative who is certified as a general
4 authority Washington peace officer under chapter 10.92 RCW, or who is
5 cross-deputized pursuant to chapter 10.93 RCW, may transport a tribal
6 fugitive within the state of Washington pursuant to an order of
7 surrender.

8 NEW SECTION. **Sec. 10.** (1) A peace officer may arrest a person
9 subject to a tribal arrest warrant from a noncertified tribe when the
10 warrant is presented by a tribal court representative or tribal law
11 enforcement officer to the peace officer or a general authority
12 Washington law enforcement agency as defined in RCW 10.93.020 or
13 entered in the national crime information center interstate
14 identification index. The arrested person must be brought to an
15 appropriate place of detention and then to the nearest available
16 superior court judge without unnecessary delay. The superior court
17 judge shall issue an order continuing custody upon presentation of
18 the tribal arrest warrant.

19 (2) The judge shall inform the person appearing under subsection
20 (1) of this section of the name of the noncertified tribe that has
21 subjected the person to an arrest warrant, the basis of the arrest
22 warrant, the right to assistance of counsel, and the right to require
23 a judicial hearing before transfer of custody to the applicable
24 noncertified tribe.

25 (3) After being informed by the judge of the effect of a waiver,
26 the arrested person may waive the right to require a judicial hearing
27 and consent to return to the applicable noncertified tribe by
28 executing a written waiver. If the waiver is executed, the judge
29 shall issue an order to transfer custody under subsection (5) of this
30 section or, with consent of the applicable noncertified tribe,
31 authorize the voluntary return of the person to that tribe.

32 (4) If a hearing is not waived under subsection (3) of this
33 section, the court shall hold a hearing within three days, excluding
34 weekends and holidays, after the initial appearance. The arrested
35 person and the prosecuting attorney's office shall be informed of the
36 time and place of the hearing. The court shall release the person
37 upon conditions that will reasonably assure availability of the
38 person for the hearing or direct a peace officer to maintain custody
39 of the person until the time of the hearing. Following the hearing,

1 the judge shall issue an order to transfer custody under subsection
2 (5) of this section unless the arrested person established by clear
3 and convincing evidence that the arrested person is not the person
4 identified in the warrant. If the court does not order transfer of
5 custody, the judge shall order the arrested person to be released.

6 (5) A judicial order to transfer custody issued under subsection
7 (4) of this section shall be directed to a peace officer to take or
8 retain custody of the person until a representative of the applicable
9 noncertified tribe is available to take custody. If the noncertified
10 tribe has not taken custody within three days, excluding weekends and
11 holidays, the court may order the release of the person upon
12 conditions that will assure the person's availability on a specified
13 date with seven days. If the noncertified tribe has not taken custody
14 within the time specified in the order, the person shall be released.
15 Thereafter, an order to transfer custody may be entered only if a new
16 arrest warrant is issued. The court may authorize the voluntary
17 return of the person with the consent of the applicable noncertified
18 tribe.

19 II. PROCEDURE FOR TRIBAL WARRANTS OF CERTIFIED TRIBES

20 NEW SECTION. **Sec. 11.** (1) Any arrest warrant issued by the
21 court of a certified tribe shall be accorded full faith and credit by
22 the courts of the state of Washington and enforced by the court and
23 peace officers of the state as if it were the arrest warrant of the
24 state. A Washington state peace officer who arrests a person pursuant
25 to the arrest warrant of a certified tribe, if no other grounds for
26 detention exist under state law, shall, as soon as practical after
27 detaining the person, and in accordance with standard practices,
28 contact the tribal law enforcement agency that issued the warrant to
29 establish the warrant's validity.

30 (2) A place of detention shall allow a certified tribe to place a
31 detainer on an inmate based on a tribal warrant. For the purposes of
32 this section, detainer means a request by a certified tribe's tribal
33 court, tribal police department, or tribal prosecutor's office, filed
34 with the place of detention in which a person is incarcerated, to
35 hold the person for the certified tribe and to notify the tribe when
36 release of the person is imminent so that the person can be
37 transferred to tribal custody.

1 (3) The privilege of the writ of habeas corpus shall be available
2 to any person detained under this provision.

3 NEW SECTION. **Sec. 12.** This act is not intended to and does not
4 diminish the authority of the state or local jurisdictions to enter
5 into government-to-government agreements with Indian tribes,
6 including mutual aid and other interlocal agreements, concerning the
7 movement of persons within their jurisdiction, does not diminish the
8 validity or enforceability of any such agreements, and is not
9 intended to and does not expand or diminish the authority of the
10 state or local jurisdictions to arrest individuals over whom they
11 have jurisdiction within Indian reservations.

12 NEW SECTION. **Sec. 13.** A tribal arrest warrant under this act is
13 not required to be given prioritization above other warrants.

14 NEW SECTION. **Sec. 14.** (1) A peace officer or a peace officer's
15 legal advisor may not be held criminally or civilly liable for making
16 an arrest under this act if the peace officer or the peace officer's
17 legal advisor acted in good faith and without malice.

18 (2) This act is not intended to limit, abrogate, or modify
19 existing immunities for prosecuting attorneys for good faith conduct
20 consistent with statutory duties.

21 NEW SECTION. **Sec. 15.** This chapter may be known and cited as
22 the "tribal warrants act."

23 NEW SECTION. **Sec. 16.** Sections 1 through 15 of this act
24 constitute a new chapter in Title 10 RCW.

25 NEW SECTION. **Sec. 17.** (1) The office of the governor shall
26 convene an implementation work group to develop processes and
27 recommendations as needed to ensure the successful implementation of
28 this act, including verification and processing of warrants under
29 this act.

30 (2) A representative of the governor's office shall chair the
31 work group and the governor's office may consult or contract with an
32 entity with subject matter expertise in criminal jurisdiction in
33 Indian country to cochair and assist with administering the work
34 group.

1 (3) The governor's office must ensure that the membership of the
2 work group is composed of equal parts state and tribal partners and
3 consists of, but is not limited to, representatives from:

4 (a) State and tribal law enforcement;

5 (b) Tribal leadership and local government leaders;

6 (c) The attorney general's office;

7 (d) State and tribal court judges; and

8 (e) Tribal and state prosecuting and defense attorneys.

9 (4) The office of the governor must provide staff support to the
10 work group and may establish subcommittees as needed.

11 (5) The work group shall:

12 (a) Hold its first meeting by July 1, 2024;

13 (b) Meet at least monthly; and

14 (c) Submit a report to the governor and appropriate committees of
15 the legislature by December 1, 2024, with a summary of its work,
16 which may include recommendations for best practices for
17 implementation of this act.

18 (6) This section expires December 31, 2024.

19 NEW SECTION. **Sec. 18.** This act takes effect July 1, 2025,
20 except for section 17 of this act, which is necessary for the
21 immediate preservation of the public peace, health, or safety, or
22 support of the state government and its existing public institutions,
23 and takes effect May 1, 2024."

24 Correct the title.

EFFECT: Requires the Office of the Governor to convene an
implementation work group to develop processes and recommendations,
as needed, to implement the act, which must hold its first meeting by
July 1, 2024, and report to the Legislature and Governor's office by
December 1, 2024.

Modifies the act's effective date to July 1, 2025, except that
the implementation work group goes into effect May 1, 2024, and
expires December 31, 2024.

Provides specified immunities for law enforcement officers and
their legal advisors, prosecuting attorneys, and the Attorney
General's Office.

States that a tribal warrant is not required to be given
prioritization above other warrants.

Modifies the definition of "certified tribe" and the process for
evidencing certification with the Attorney General's Office.

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