

**SSB 6146** - H COMM AMD

By Committee on Community Safety, Justice, & Reentry

**ADOPTED AND ENGROSSED 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  
32 by the United States Constitution. The legislature also finds that

1 all defendants in tribal courts have the right to petition for a writ  
2 of habeas corpus.

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

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

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

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

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

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

35 (4) "Place of detention" means a jail as defined in RCW  
36 70.48.020, a correctional facility as defined in RCW 72.09.015, and  
37 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;
- 8 (e) State and tribal court clerks;
- 9 (f) State and tribal jail administrators and directors; and
- 10 (g) Tribal and state prosecuting and defense attorneys.

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

13 (5) The work group shall:

- 14 (a) Hold its first meeting by July 1, 2024;
- 15 (b) Meet at least monthly; and
- 16 (c) Submit a report to the governor and appropriate committees of  
17 the legislature by December 1, 2024, with a summary of its work,  
18 which may include recommendations for best practices for  
19 implementation of this act.

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

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

26 Correct the title.

--- END ---