
Community Safety, Justice, & Reentry Committee

SSB 6146

Brief Description: Concerning tribal warrants.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Dhingra, Kauffman, Robinson, Stanford, Hasegawa, Randall, Wellman, Kuderer, Lovelett, Nobles, Saldaña, Shewmake, Valdez and Wilson, C.).

Brief Summary of Substitute Bill

- Creates processes for state law enforcement officers to enforce tribal arrest warrants, and accompanying procedures for state courts in specified circumstances.
- Creates processes for state law enforcement officers and places of detention to deliver tribal fugitives to a requesting tribal authority, and accompanying procedures for state courts in specified circumstances.

Hearing Date: 2/19/24

Staff: Michelle Rusk (786-7153).

Background:

The Supreme Court of the United States has recognized Indian tribes as unique aggregations possessing attributes of sovereignty over both their members and their territory; that they are a separate people possessing the power of regulating their internal and social relations. The Court has further recognized that the several Indian nations are distinct political communities, having territorial boundaries within which their authority is exclusive. Historically, the Court has viewed Congress as acting upon the assumption that the states have no power to regulate affairs

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

of Indians on reservations and has expressly granted jurisdiction to the states when it has desired to do so.

In 1953 Congress enacted Public Law 83-280 giving the consent of the United States to states that pass relevant legislation to assume jurisdiction over criminal offenses and civil causes of action on tribal lands. In 1957 Washington enacted chapter 37.12 RCW permitting the state to assume civil and criminal jurisdiction on tribal lands only after receiving a request from an individual Indian tribe. In 1963 the Legislature passed Senate Bill 56 which extended state jurisdiction over certain matters without prior tribal consent. Since that time, the state has created a retrocession process by which civil and/or criminal jurisdiction over a federally recognized Indian tribe may be retroceded to the United States, upon the request of an authorized governing body of a tribe. Whether and to what degree a tribal member and tribal land is under state civil or criminal jurisdiction is dependent on the tribe's relationship to this state before, during, and after Washington's implementation of these different laws concerning jurisdiction.

The governing body of a tribe may request its people and lands be subject to the criminal jurisdiction of Washington to the full extent authorized by federal law by submitting a resolution to that effect to the Governor who then must issue a proclamation stating that such jurisdiction applies to all tribal members and all Indian territory, reservations country, and lands of the Indian body involved to the same extent that Washington exercises criminal jurisdiction elsewhere in the state.

There are 29 federally recognized Indian tribes within the state of Washington, many of which have agreed, by treaty and through practice, not to shelter or conceal individuals who violate state law and to surrender them to the state for prosecution.

Summary of Bill:

The Tribal Warrants Act is created.

Definitions.

The following definitions are established:

- "Tribal fugitive or fugitive" means any person who is subject to tribal court criminal jurisdiction, who committed an alleged crime under the tribal code and thereafter fled tribal jurisdiction, including by escaping or evading confinement, breaking the terms of their probation, bail, or parole, or absenting themselves from the jurisdiction of the tribal court.
- "Noncertified tribe" means a federally recognized tribe located within the borders of Washington that is requesting a tribal fugitive be surrendered to the duly authorized agent of the tribe, but has not received approval to exercise jurisdiction under the Tribal Law and Order Act of 2010 (TLOA), and which has agreed by treaty or practice not to shelter or conceal offenders against the laws of the state of Washington but to deliver them up to the state authorities for prosecution.
- "Certified tribe" means a federally recognized tribe located within the borders of

Washington that has either received approval to exercise jurisdiction under the TLOA and has otherwise posted confirmation to the tribal government's public website documenting that the tribe has met the requirements of the TLOA as certified by the Office of the Attorney General, and which has agreed by treaty or practice not to shelter or conceal offenders against the laws of the state of Washington but to deliver them up to state authorities for prosecution.

Procedure for Tribal Warrants of Certified Tribes.

A procedure is created for state law enforcement officers to enforce the arrest warrants of certified tribes. The arrest warrants of certified tribes must be accorded full faith and credit by state courts and state law enforcement officers, meaning such courts and officers must treat the arrest warrant of a certified tribe as if it were a Washington state arrest warrant.

When a Washington state law enforcement officer arrests a person pursuant to the tribal arrest warrant of a certified tribe, if no other grounds for detention exist under state law, the officer must contact the tribal law enforcement agency that issued the warrant to establish the warrant's validity.

Places of detention, in response to a request from a certified tribe filed with a place of detention in this state, must allow certified tribes to place a hold on an inmate based on a tribal warrant and notify the tribe when release of the person is imminent so that the person may be transferred to tribal custody. The privilege of the writ of habeas corpus is available to any person detained in the foregoing circumstance.

Procedure for Tribal Warrants of Noncertified Tribes.

Return of a Tribal Fugitive.

A procedure is created for state law enforcement officers and places of detention to deliver tribal fugitives to a requesting tribal authority. Places of detention include state jails, state correctional facilities, and any similar facility contracted by a city or county.

When a place of detention becomes aware it is housing a tribal fugitive, it must provide notice to the tribal law enforcement of a noncertified tribe who issued an arrest warrant for the tribal fugitive. The tribe may then demand the return of the fugitive by submitting a written demand that alleges the person sought is a tribal fugitive and the tribal court has jurisdiction. The demand must be accompanied by either a copy of the charging document, a copy of the arrest warrant and supporting affidavit, or a copy of the judgement and sentence.

Either the attorney general or the prosecuting attorney of the county in which the fugitive is held must then submit the demand and accompanying documents to the applicable superior court along with a motion for an order of surrender. The motion must also be served upon the person sought.

The person whose return is sought may then either consent to their return to the noncertified tribe or may demand a hearing to test the legality of the motion. Any hearing must take place within

three judicial days of the demand and is limited to determining:

- whether the person has been charged with or convicted of a crime by the tribe;
- whether the person before the court is the person named in the request; and
- whether the person is a fugitive.

If the judge determines these requirements have been met, and the underlying documentation is in order, the judge must issue an order for surrender to the noncertified tribe. A tribe is responsible for arranging transportation of a tribal fugitive from the place of detention. A tribal court representative who is certified as a general authority Washington peace officer, or who is cross-deputized, may transport a tribal fugitive within the state of Washington pursuant to an order of surrender. If the tribe does not take custody of the person on the date the person is scheduled to be released, or within 48 hours, whichever is later, the person may be released from custody with bail conditioned on the person's appearance before the court at a later time for the person's surrender to the tribe.

A place of detention must deliver or make available a tribal fugitive within the place of detention without a judicial order of surrender only if:

- the person is alleged to have broken the terms of the person's probation, parole, bail, or any other release of tribe; and
- the place of detention has received from the tribe an authenticated copy of prior waiver of extradition signed by the person as a term of their probation, parole, bail, or any other release of the tribe.

If a state criminal prosecution has been instituted against a tribal fugitive and is still pending, return of a tribal fugitive must be placed on hold until the fugitive's release from a place of detention, unless agreed upon otherwise in any given case.

Arrest of a Tribal Fugitive.

A procedure is created for state law enforcement officers to arrest individuals subject to the tribal arrest warrant of a noncertified tribe.

Peace officers of the state of Washington may arrest a person subject to a tribal arrest warrant from a noncertified tribe when the warrant is presented by a tribal court representative or tribal law enforcement officer, or when the warrant is entered into the National Crime Information Center Interstate Identification Index.

The arrested person must be brought to an appropriate place of detention and then to the nearest available superior court judge without unnecessary delay. The judge must inform the person of the name of the tribe that issued the warrant, the basis of the warrant, the right to counsel, and the right to a hearing on the matter. The court must then issue an order continuing custody upon presentation of the tribal arrest warrant.

The arrested person may waive their right to a hearing, but if the hearing is not waived, the court must hold the hearing within three judicial days. Following the hearing, a judge must issue an

order to transfer custody unless the arrested person establishes by clear and convincing evidence that they are not the person identified in the warrant. If a court does not issue an order to transfer custody, the judge must order the arrested person released.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.