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**HOUSE BILL 2305**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** Representatives Lekanoff, Goodman, Reed, Ramel, Davis, and Pollet

Read first time 01/11/24. Referred to Committee on Community Safety, Justice, & Reentry.

1 AN ACT Relating to tribal warrants; and adding a new chapter to  
2 Title 10 RCW.

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

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

17 The legislature also recognizes the inherent authority of the  
18 judiciary under Article IV, section 1 of the state Constitution to  
19 establish rules regarding the jurisdiction of and communication  
20 between state and tribal courts as evidenced by superior court civil  
21 rule 82.5. The tribal state court consortium exists within the

1 Washington state administrative office of the courts as a joint  
2 effort between the state and tribal court officers and other judicial  
3 branch members for the purpose of expanding communication and  
4 collaboration. The consortium provides an open, transparent forum  
5 where state and tribal court judicial officers may convene regarding  
6 issues of jurisdiction and service gaps, and to develop partnerships.  
7 With an emphasis on issues of domestic violence and sexual assault,  
8 the consortium's initiatives expressly include addressing issues of  
9 full faith and credit in these contexts.

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

29 The legislature additionally recognizes the importance of  
30 establishing clear statutory duties when directing peace officers of  
31 this state to effectuate new aspects of their work. It is the intent  
32 of the legislature that this act set forth procedures by which peace  
33 officers and correctional staff of this state must recognize and  
34 effectuate tribal arrest warrants.

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

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

4           (1) "Noncertified tribe" means a federally recognized tribe  
5 located within the borders of the state of Washington that is  
6 requesting that a tribal fugitive be surrendered to the duly  
7 authorized agent of the tribe, but has not received approval to  
8 exercise jurisdiction under the tribal law and order act of 2010,  
9 section 234, codified at 25 U.S.C. Sec. 1302 or been certified by the  
10 tribal state court consortium as meeting the requirements of the  
11 tribal law and order act, and which has agreed by treaty or practice  
12 not to shelter or conceal offenders against the laws of the state of  
13 Washington but to deliver them up to state authorities for  
14 prosecution.

15           (2) "Certified tribe" means a federally recognized tribe located  
16 within the borders of the state of Washington that has either  
17 received approval to exercise jurisdiction under the tribal law and  
18 order act of 2010, section 234, codified at 25 U.S.C. Sec. 1302, or  
19 has otherwise met the requirements of the tribal law and order act as  
20 certified by the tribal state court consortium, and which has agreed  
21 by treaty or practice not to shelter or conceal offenders against the  
22 laws of the state of Washington but to deliver them up to state  
23 authorities for prosecution.

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

25           (4) "Place of detention" means a jail as defined in RCW  
26 70.48.020, a correctional facility as defined in RCW 72.09.015, and  
27 any similar facility contracted by a city or county.

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

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

37           (7) "Tribal police officer" has the same meaning as in RCW  
38 10.92.010.

39           **I. PROCEDURE FOR TRIBAL WARRANTS OF NONCERTIFIED TRIBES**

1        NEW SECTION.    **Sec. 3.** A place of detention shall provide notice  
2 to the tribal law enforcement within the jurisdiction of a  
3 noncertified tribe who issued an arrest warrant for a tribal fugitive  
4 as soon as practicable after learning that the tribal fugitive is a  
5 prisoner in the place of detention. The notice shall include the  
6 reason for the detention and the anticipated date of release, if  
7 known.

8        NEW SECTION.    **Sec. 4.** The noncertified tribe whose court issued  
9 the warrant of arrest may demand the extradition of the tribal  
10 fugitive from a place of detention. The demand will be recognized if  
11 in writing, it alleges that the person is a tribal fugitive, the  
12 tribal court has jurisdiction, and is accompanied by either:

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

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

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

21        NEW SECTION.    **Sec. 5.** If a criminal prosecution has been  
22 instituted against a tribal fugitive under the laws of this state or  
23 any political subdivision thereof and is still pending, extradition  
24 on a tribal court request under sections 3 through 9 of this act  
25 shall be placed on hold until the tribal fugitive's release from a  
26 place of detention, unless otherwise agreed upon in any given case.

27        NEW SECTION.    **Sec. 6.** (1) The attorney general or prosecuting  
28 attorney shall submit all applicable documents specified in section 3  
29 of this act to a superior court judge in this state along with a  
30 motion for an order of surrender. The motion for an order of  
31 surrender shall be served upon the person whose extradition is  
32 demanded.

33        (2) A person who is served with a motion for an order of  
34 surrender shall be taken before a superior court judge in this state  
35 the next judicial day. The judge shall inform the person of the  
36 demand made for the person's surrender and the underlying reason for

1 the demand, and that the person has the right to demand and procure  
2 legal counsel.

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

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

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

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

17 (c) Whether the person is a fugitive.

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

22 (6) If the superior court judge determines that the requirements  
23 of subsection (4) of this section and section 3 of this act have been  
24 met, the judge shall issue an order of surrender to the noncertified  
25 tribe. If the noncertified tribe does not take custody of the person  
26 pursuant to the order of surrender on the date the person is  
27 scheduled to be released from the place of detention or within 48  
28 hours of the entry of the order of surrender, whichever is later, the  
29 person may be released from custody with bail conditioned on the  
30 person's appearance before the court at a time specified for his or  
31 her surrender to the noncertified tribe or for the vacation of the  
32 order of surrender.

33 NEW SECTION. **Sec. 7.** Subject to the provisions of section 5 of  
34 this act, a place of detention shall deliver or make available a  
35 person in custody to the noncertified tribe without a judicial order  
36 of surrender provided that:

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

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

7 NEW SECTION. **Sec. 8.** (1) A noncertified tribe that requests  
8 extradition pursuant to this act is responsible to arrange the  
9 transportation for the tribal fugitive from the place of detention to  
10 the tribal court or detention facility. The detention facility and  
11 noncertified tribe are encouraged to select the means of transport  
12 that best protects public safety after considering available  
13 resources. At the request of a noncertified tribe, a city, county, or  
14 the governor must engage in good faith efforts to negotiate an  
15 agreement to effectuate this subsection.

16 (2) A tribal court representative may transport a tribal fugitive  
17 within the state of Washington pursuant to an order of surrender.

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

29 (2) The judge shall inform the person appearing under subsection  
30 (1) of this section of the name of the noncertified tribe that has  
31 subjected the person to an arrest warrant, the basis of the arrest  
32 warrant, the right to assistance of counsel, and the right to require  
33 a judicial hearing before transfer of custody to the applicable  
34 noncertified tribe.

35 (3) After being informed by the judge of the effect of a waiver,  
36 the arrested person may waive the right to require a judicial hearing  
37 and consent to return to the applicable noncertified tribe by  
38 executing a written waiver. If the waiver is executed, the judge

1 shall issue an order to transfer custody under subsection (5) of this  
2 section or, with consent of the applicable noncertified tribe,  
3 authorize the voluntary return of the person to that tribe.

4 (4) If a hearing is not waived under subsection (3) of this  
5 section, the court shall hold a hearing within three days, excluding  
6 weekends and holidays, after the initial appearance. The arrested  
7 person and the prosecuting attorney's office shall be informed of the  
8 time and place of the hearing. The court shall release the person  
9 upon conditions that will reasonably assure availability of the  
10 person for the hearing or direct a peace officer to maintain custody  
11 of the person until the time of the hearing. Following the hearing,  
12 the judge shall issue an order to transfer custody under subsection  
13 (5) of this section unless the arrested person established by clear  
14 and convincing evidence that the arrested person is not the person  
15 identified in the warrant. If the court does not order transfer of  
16 custody, the judge shall order the arrested person to be released.

17 (5) A judicial order to transfer custody issued under subsection  
18 (4) of this section shall be directed to a peace officer to take or  
19 retain custody of the person until a representative of the applicable  
20 noncertified tribe is available to take custody. If the noncertified  
21 tribe has not taken custody within three days, excluding weekends and  
22 holidays, the court may order the release of the person upon  
23 conditions that will assure the person's availability on a specified  
24 date with seven days. If the noncertified tribe has not taken custody  
25 within the time specified in the order, the person shall be released.  
26 Thereafter, an order to transfer custody may be entered only if a new  
27 arrest warrant is issued. The court may authorize the voluntary  
28 return of the person with the consent of the applicable noncertified  
29 tribe.

## 30 **II. PROCEDURE FOR TRIBAL WARRANTS OF CERTIFIED TRIBES**

31 NEW SECTION. **Sec. 10.** (1) Any arrest warrant issued by the  
32 court of a certified tribe shall be accorded full faith and credit by  
33 the courts of the state of Washington and enforced by the court and  
34 peace officers of the state as if it were the arrest warrant of the  
35 state.

36 (2) A place of detention shall allow a certified tribe to place a  
37 detainer on an inmate based on a tribal warrant. For the purposes of  
38 this section, detainer means a request by a certified tribe's tribal

1 court, tribal police department, or tribal prosecutor's office, filed  
2 with the place of detention in which a person is incarcerated, to  
3 hold the person for the certified tribe and to notify the tribe when  
4 release of the person is imminent so that the person can be  
5 transferred to tribal custody.

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

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

17 NEW SECTION. **Sec. 12.** This chapter may be known and cited as  
18 the "tribal warrants act."

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

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