

SENATE BILL REPORT

SB 5081

As of February 13, 2019

Title: An act relating to creating the Indian fugitive extradition act.

Brief Description: Creating the Indian fugitive extradition act.

Sponsors: Senator McCoy.

Brief History:

Committee Activity: Law & Justice: 2/14/19.

Brief Summary of Bill

- Authorizes the extradition of a fugitive Indian charged with an offense by a federally recognized tribe to be delivered from the state to the tribe.
- Authorizes the extradition of a fugitive non-Indian for certain domestic violence offenses.
- Requires a compact to be entered by the Governor and a tribe providing legal assistance to the defendant prior to extradition.
- Establishes a judicial extradition process.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: There are more than 550 federally recognized Indian tribes in the United States, including 29 tribes in Washington State.

A complex legal system informally called Indian law governs the rights of Indian tribes. Under Indian law, tribes exercise significant independent sovereign authority. This is particularly the case in "Indian country," a term defined in Federal law to include reservations and certain off reservation land held in trust by the United States government for tribes and tribal members.

Most Indian law is federal law, set forth in the United States Constitution, Indian treaties, federal executive orders, federal statutes and regulations, and federal case law. Washington

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and several other states currently exercise limited state jurisdiction in Indian country pursuant to a 1953 federal act delegating authority to the states. Indian law is, generally, geographically-based, applying only in Indian country. In Washington, Indian country encompasses approximately 5,200 square miles, roughly 7 percent of the state's 71,362 square miles.

Special Domestic Violence Criminal Jurisdiction of Tribes. Congress passed the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) which addresses tribal jurisdiction over perpetrators of domestic violence. VAWA 2013 authorized tribes to exercise their sovereign power to investigate, prosecute, convict, and sentence both Indians and non-Indians who assault Indian spouses or dating partners, or violate a protection order in Indian country. VAWA 2013 also clarifies tribes' sovereign power to issue and enforce civil protection orders against Indians and non-Indians.

Tribes are free to participate or not under VAWA 2013. The authority of United States attorneys, state, and local prosecutors, where they have jurisdiction to prosecute crimes in Indian country remains unchanged. Covered offenses are determined by tribal law, but a tribe's criminal jurisdiction over non-Indians are limited, as defined in federal law, to domestic violence, dating violence, and criminal violations of protection orders.

Crimes generally not covered by VAWA 2013 include:

- crimes committed outside of Indian country;
- crimes between two non-Indians;
- crimes between two strangers, including sexual assaults;
- crimes committed by a person who lacks sufficient ties to the tribe, such as living or working on its reservation; and
- child abuse or elder abuse that does not involve the violation of a protection order.

Under VAWA a tribe must:

- protect the rights of defendants under the Indian Civil Rights Act of 1968, which largely tracks the United States Constitution's Bill of Rights, including the right to due process,
- protect the rights of defendants described in the Tribal Law and Order Act of 2010, by providing (1) effective assistance of counsel for defendants, (2) free, appointed, licensed attorneys for indigent defendants, (3) law-trained tribal judges who are also licensed to practice law, (4) publicly available tribal criminal laws and rules, and (5) recorded criminal proceedings;
- include a fair cross-section of the community in jury pools and not systematically exclude non-Indians, and
- inform defendants ordered detained by a tribal court of their right to file federal habeas corpus petitions.

Extradition Laws. Washington State enacted a Uniform Criminal Extradition Act allowing the Governor to arrest and deliver a fugitive charged with a crime in another state. The uniform law does not apply to tribes but only to other states.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): If any Indian charged with an offense by a federally recognized tribe is a fugitive from justice, they may be extradited to the tribe from which they fled. Any non-Indian fugitive charged with an offense under VAWA 2013 may be extradited to the tribe.

No extradition is available unless both the Governor and the tribe involved have entered into a compact that covers mutual legal assistance in criminal matters. Any mutual legal assistance in a criminal matters compact must:

- provide for taking a person's testimony or statements;
- provide a means for obtaining documents, records, and items of evidence;
- provide a procedure for locating or identifying persons or items;
- address the serving of documents;
- provide a means for transferring persons in custody for testimony or other purposes;
- include provisions for executing requests for searches and seizures; and
- provide for any other form of assistance not prohibited by the laws of the Indian tribe or the state of Washington.

No compact may diminish or reduce the state's current right, power, or privilege to execute arrest or search warrants or to enforce legal process within any reservation.

An extradition demand by a tribe may not be recognized unless a compact has been entered, and the written demand is received by the attorney general. The demand or request must state the accused person was present on the reservation during the time of the alleged crime, and fled the reservation to avoid prosecution. The demand or request must be accompanied by a certified copy of the arrest warrant, charging document, affidavit, and judgment of conviction, or sentence.

The attorney general must present these documents to a superior court judge. If the judge believes the demand should be met, an arrest warrant may be issued. Alternatively the judge may ask the attorney general to investigate the circumstances. The judge may not consider the guilt or innocence of the fugitive in an extradition proceeding. A person arrested on such a warrant must be brought before the judge issuing the warrant to be informed of the extradition demand, of the crime charged, and of the right to legal counsel before being delivered to the tribe.

The arrest pursuant to such a warrant may be challenged by a writ of habeas corpus and is limited to whether:

- the extradition documents on their face are in order;
- the petitioner has been charged with a crime in the demanding tribe;
- the petitioner is the person named in the request for extradition; and
- the petitioner is a fugitive.

The state does not waive its right to try a person who is a fugitive for crimes committed in the state of Washington. If a criminal prosecution in state court is pending against the fugitive, the attorney general has discretion to either commence extradition proceedings on tribal demand or hold the person until they have tried and discharged, or convicted and punished in this state.

The act does not void, preempt, or supersede any existing agreement between a tribe and a state or local agency for the return or extradition of any person to a tribe.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.