
**Community Safety, Justice, & Reentry
Committee**

HB 1555

Brief Description: Concerning extradition of persons to and from Indian jurisdiction.

Sponsors: Representatives Lekanoff, Goodman, Pollet, Davis and Doglio.

Brief Summary of Bill

- Requires this state to comply with applicable tribal extradition law requirements if it seeks extradition of an Indian from within the jurisdiction of an Indian tribe in this state.
- Allows an Indian tribe that permits extradition by this state of Indians from a tribal jurisdiction to request the extradition of Indians from state jurisdiction.

Hearing Date: 2/7/23

Staff: Michelle Rusk (786-7153).

Background:

Extradition.

The United States Constitution, federal law, and state law each address extradition. Extradition concerns whether and how a person, who has allegedly committed a criminal offense in one jurisdiction and flees to another, could be returned to the first jurisdiction.

The United States Constitution contains an extradition clause providing for extradition between states, and federal statute implements the United States Constitution's extradition clause by addressing procedures for extradition within the United States and with foreign countries,

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including hearings, protections for an accused, transportation, and costs.

Washington has adopted the Uniform Criminal Extradition Act (Act), which permits extradition under circumstances and through procedures not articulated in federal statute. The Act applies to "states," which includes the other 49 states, the District of Columbia, or territory organized or unorganized of the United States of America.

The Act addresses: (1) when and how Washington may arrest and deliver an accused back to the state from where the accused fled and had allegedly committed a crime; (2) when and how the governor may seek return of a person charged with a crime in this state and held in another state; and (3) procedures concerning the accused, including arrest, confinement, judicial proceedings, and waiver.

When evaluating an extradition demand, a court may only decide:

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

State Jurisdiction over Tribal Members.

Several complex and interconnected federal and state laws govern whether and how a state or the federal government may exercise civil or criminal jurisdiction over tribal land, including the United States Constitution, Indian treaties, federal statutes and regulations, federal executive orders, and federal case law.

Whether and to what degree a tribal member and tribal land is under state civil or criminal jurisdiction depends on the tribe's relationship to this state before, during, and after Washington's implementation of different laws concerning jurisdiction. Prior to federal passage of what is known as "Public Law 280," criminal jurisdiction over tribes was shared between tribes and the federal government. After implementation of Public Law 280, some states were required, and others had the option, to assume jurisdiction over tribal land.

Washington was an "optional" state under Public Law 280, and in response it has enacted different pieces of legislation providing for varying levels of criminal and civil jurisdiction by the state over tribal members and tribal land located in the state. When initially implementing Public Law 280, Washington law provided for certain state jurisdiction over tribal members and tribal land if a tribe requested such jurisdiction. State law was subsequently amended to unilaterally retain jurisdiction in eight areas, in certain instances: compulsory school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children, and the operation of motor vehicles on public streets, roads, alleys, and highways. Since that time, state law has been further amended to retrocede criminal jurisdiction back to certain tribes, and more recently the state created a general retrocession process for returning civil and criminal jurisdiction back to a tribe requesting it. All of these laws impact tribes differently based on the jurisdictional relationship the tribe has had with the state at the

time the laws were implemented.

In summary, Washington has full jurisdiction over some federally-recognized tribes located in Washington, other tribes are under partial criminal jurisdiction of the state, and some tribes are under federal criminal jurisdiction. Whether the state has jurisdiction over tribal land bears directly on how the state can respond to an extradition demand.

Summary of Bill:

Extradition.

Washington must comply with any applicable requirements of tribal extradition law if it seeks extradition of an Indian from within the jurisdiction of an Indian tribe located in this state.

An Indian tribe that permits extradition by Washington, of Indians from a tribal jurisdiction, may request the extradition of Indians from state jurisdiction.

A tribe's extradition demand must be directed to:

- the county prosecuting attorney of the county in which the tribe is located, or where the person demanded is thought to be located; or
- the attorney general.

A tribe's written demand for extradition must be recognized if the demand is accompanied by both:

- a copy of a warrant issued for the person demanded; and
- a criminal complaint or sworn statement made before a tribal judge substantially charging the person demanded with: (1) a crime under tribal law; (2) escape from confinement; or (3) a violation of probation or parole.

The public officer who receives the written demand must perform the functions of the governor under the state's laws on warrants and arrests.

Appropriation: None.

Fiscal Note: Available.

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