

HOUSE BILL REPORT

ESHB 1555

As Passed House:

March 1, 2023

Title: An act relating to extradition of persons to and from Indian jurisdiction.

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

Sponsors: House Committee on Community Safety, Justice, & Reentry (originally sponsored by Representatives Lekanoff, Goodman, Pollet, Davis and Doglio).

Brief History:

Committee Activity:

Community Safety, Justice, & Reentry: 2/7/23, 2/16/23 [DPS].

Floor Activity:

Passed House: 3/1/23, 96-0.

Brief Summary of Engrossed Substitute Bill

- Provides that the state or a political subdivision thereof must comply with all applicable requirements of tribal extradition law when it seeks extradition of a person from within the jurisdiction of an Indian tribe located in this state over whom the tribe has criminal jurisdiction.
- Provides that an Indian tribe that permits extradition of persons from within the tribe's jurisdiction by the state or a political subdivision thereof may request the extradition of persons subject to a tribal court warrant from state jurisdiction.

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Simmons, Vice Chair; Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member;

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.

Davis, Farivar, Fosse, Graham and Ramos.

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, 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 Engrossed Substitute Bill:

Extradition.

Washington or any political subdivision thereof must comply with all applicable requirements of tribal extradition law when it seeks extradition of a person over whom the tribe has criminal jurisdiction from within the jurisdiction of an Indian tribe located in this state.

An Indian tribe that permits extradition of persons from within the tribe's jurisdiction by Washington or a political subdivision thereof may request the extradition of persons subject to a tribal court warrant 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.

Unless agreed otherwise, a tribe requesting extradition from any area under state jurisdiction must reimburse the reasonable costs of the extradition, and if any state jurisdiction requests extradition from a tribe, the state shall reimburse the tribe for reasonable costs of the extradition.

There is no intention to diminish, and the following are not diminished: (1) state or local authority to enter into government-to-government agreements with Indian tribes concerning extradition of persons within their jurisdiction; (2) the validity or enforceability of these agreements; and (3) authority of state or local jurisdictions to arrest individuals over whom they have jurisdiction within Indian reservations.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Conversations around the issue of extradition have been happening since the federal passage of the Violence Against Women Act (VAWA) many years ago. The VAWA took a look at how non-natives within tribal reservations and communities have violated women through domestic violence and sexual abuse. This bill does not impact women with respect to the VAWA, but is a small part of a conversation that states must have, including looking at how states recognize tribal warrants. This bill allows local governments to recognize a tribal warrant and work in collaboration with a tribe to find a human who has impacted and harmed a person within a reservation.

This issue has been on the Washington Association of Sheriffs and Police Chief's legislative agenda before. We support mutual recognition of warrants between tribe law agencies and tribal law enforcement agencies. If there are adjustments that need to be made for mutually agreed upon recognition of warrants, we are supportive of that.

Under the VAWA, tribes have jurisdiction over Indians and non-Indians for a number of offenses, including stalking, sexual assault, assaults against children, domestic violence and others. As it stands, however, perpetrators of these crimes can flee tribal boundaries and warrants from the tribes are unenforceable. This bill allows tribes to achieve justice for victims when people do flee from reservation boundaries. This policy is structured as an opt-in so far, which does not force it on any tribes.

(Opposed) We share the goal everyone has articulated, but we do not think this legislation is the vehicle to get us there. In the absence of an extradition agreement between sovereign

nations, either party can choose to honor, or not, an extradition request. The Tulalip Tribe has no trouble getting the state to honor its warrants. If this bill becomes law, it could disrupt our operations. The process laid out in the bill could slow down and make more expensive an otherwise routine practice in our offices.

Determining extradition policies should start with the 29 tribes entering into agreements between sovereigns, not a state law enforcing a method upon the tribes. The extradition bill is not a proper vehicle for tribe. There should be a tribal–state extradition framework that can be a model for the other 49 states.

(Other) We supports the policy goal. We appreciate that these are unique relationships and things are complex. But there is a need for something more formal. In a state-to-state or country-to-country situation there is a mutual legal assistance treaty that draws out or specifies the arrangement. We appreciate there may be unique circumstances that need unique solutions.

Persons Testifying: (In support) Representative Debra Lekanoff, prime sponsor; Mike Lasnier, The Suquamish Tribe; James McMahan, Washington Association of Sheriffs and Police Chiefs; Earl Cowan, Melissa Simonsen, and Margaret Finkbonner, Swinomish Indian Tribal Communication; and Jarred-Michael Erickson, Confederated Tribes of the Colville Reservation.

(Opposed) Brian Kilgore, Tulalip Tribes of Washington.

(Other) Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.