

HOUSE BILL REPORT

SSB 6146

As Passed House - Amended:

February 28, 2024

Title: An act relating to tribal warrants.

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 History:

Committee Activity:

Community Safety, Justice, & Reentry: 2/19/24, 2/20/24 [DPA].

Floor Activity:

Passed House: 2/28/24, 94-0.

Brief Summary of Substitute Bill (As Amended by House)

- 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.

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

Majority Report: Do pass as amended. Signed by 9 members: Representatives Goodman, Chair; Simmons, Vice Chair; Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Davis, Farivar, Fosse, Graham and Ramos.

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.

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 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 Amended 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 the State of Washington that: (a) may impose a term of imprisonment of greater than one year, or a fine greater than \$5,000, or both, pursuant to the tribal law and order act of 2010, section 234, codified at 25 U.S.C. Sec. 1302; and (b) has agreed 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.

Any arrest warrant issued by certified tribes must be accorded full faith and credit by state courts and enforced by the courts and state peace officers as if it were the arrest warrant of Washington.

When a state law enforcement officer arrests a person under a tribal arrest warrant of a certified tribe, and 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.

In response to a request from a certified tribe filed with a place of detention in this state, places of detention 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.

A certified tribe must provide certification of its criminal jurisdiction and agreement not to shelter or conceal offenders against the laws of the state, signed by its judicial officer and chief legal counsel, to the Office of the Attorney General (AGO). The AGO must receive the certification documentation and review it to confirm it is complete. The AGO is immune from liability arising out of the performance of the AGO's duties under the act, except for intentional or willful misconduct.

Procedure for Tribal Warrants of Noncertified Tribes.

Return of a Tribal Fugitive.

A procedure is created for the return of a tribal fugitives to a requesting noncertified tribe.

When a place of detention, which includes state jails and correctional facilities, 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 demand the return of the fugitive by submitting a written demand alleging 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 the arrest of 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.

Immunity.

A peace officer or a peace officer's legal advisor may not be held criminally or civilly liable for making an arrest under this act if the peace officer or the peace officer's legal advisor acted in good faith and without malice. Moreover, this act is not intended to limit, abrogate, or modify existing immunities for prosecuting attorneys for good faith conduct consistent with statutory duties.

Implementation Work Group.

The Office of the Governor must convene and chair a work group to develop processes and recommendations as needed to successfully implement this act. The work group must meet at least monthly, hold its first meeting by July 1, 2024, and report to the Legislature and Governor's office with a summary of its work by December 1, 2024. Membership of the work group must include equal parts state and tribal partners, and including specified representatives.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Section 17 of the bill contains an emergency clause and takes effect on May 1, 2024. The remainder of the bill takes effect on July 1, 2025.

Staff Summary of Public Testimony:

(In support) This policy idea began in 2019 and has been in the Legislature every year for the past five years. This issue deserves a resolution and this bill provides a concrete solution to prevent circumstances leading to the loss of our women and children. The best way to achieve public safety and fair and effective judicial systems is through continued and expanded cooperation between tribal and state jurisdictions where each other's warrants are honored.

In 2022 the federal Violence Against Women Act (VAWA) was reauthorized by Congress. The 2022 VAWA reauthorization restored tribal jurisdiction over non-natives for certain crimes, including domestic violence, sexual violence, sex trafficking, and stalking. Unfortunately, Washington does not have a method for enforcing tribal warrants outside of the boundaries of reservations. Thus, a person can commit a crime on a reservation but end up not getting arrested after leaving a reservation.

Tribes have always provided reciprocity to the state by arresting and returning thousands of state fugitives who have fled to tribal jurisdiction. Now, the state would be able to enforce tribal warrants the same way the tribes have enforced state warrants.

There are three very good reasons to support this bill. One, domestic violence perpetrators who flee from tribal justice end up with expired temporary protection orders, no treatment, no accountability, and no conviction. The perpetrator may flee with their victim or prey upon new victims, and because they have never been convicted they can still buy a gun by technically circumventing state and federal gun laws. Two, sex offenders who flee from tribal justice never have to register because they have never been returned to tribal courts and convicted. Three, when young people flee to avoid justice or a treatment center on or near a tribe, they are sometimes preyed upon by human traffickers and end up in extremely dangerous circumstances. Tribes often have a warrant for these individuals and sometimes state law enforcement is aware of a tribe's warrant and engaging with the person, but many times a tribe's warrant is ignored and the person is left on the streets. When these horrors happen, they will occur in communities in state jurisdiction.

Smaller tribes like the Quileute Tribe will not qualify as a certified tribe yet. However, having tribal warrants recognized and some process available to extradite a defendant is paramount even for noncertified tribes. It is vital that there is a system in place so a tribe's warrant may be recognized and acted upon and a defendant extradited to tribal jurisdiction. This is very similar to when a warrant is issued for a defendant in Olympia and the defendant is picked up in Clallam County. Shouldn't a defendant from La Push also be able to be picked up and held in Clallam County?

Do not delay implementation. Justice delayed is justice denied.

(Opposed) None.

(Other) The Washington Association of Sheriffs and Police Chiefs (WASPC) supports the

goals of this bill, and participated in the policy process in 2018 resulting in Senator McCoy's bill in 2019, but the "how" of achieving the bill's policy goals is the problem. There are grave concerns with this bill, which is very different from the 2019 bill.

The bill could be improved in six different ways. One, use the compact process, which is what Senator McCoy's bill required. Two, domesticate the orders contemplated under the bill. Three, create a crime of "fugitive from tribal justice." This type of offense plays a part in how Washington currently fulfills its constitutional duties to provide full faith and credit to other states' warrants. Four, direct the Solicitor General to study this very complicated legal matter and make recommendations for the 2025 Legislative Session. Five, request an Attorney General's Opinion, or six, change every "must" or "shall" in the bill to "may" and provide absolute liability protections for all law enforcement and corrections officers. Liability protections must be in the bill for state officers and agencies.

There is a shared vision between all of the interested parties who participated in the work on this bill. The Washington Association of Prosecuting Attorneys (WAPA) drafted the 2019 bill on this topic, which required compacts and makes a great deal of sense. Compacts allow a sovereign-to-sovereign relationship to occur and respects the sovereignty of tribal jurisdiction. Washington does not provide warrant reciprocity for other states without some additional process. The constitution requires the giving of full faith and credit, but legislation must still be enacted to review other states' warrants through extradition or governor's warrant processes. There must be some type of mechanism for processing a tribe's arrest warrant and this bill does not provide that. Problems will arise if someone is arrested by state law enforcement and brought back to a tribe and the person challenges that initial arrest. Other states, including Idaho and Arizona, have looked at this issue and recognize that there cannot be action on another sovereign's documents without some type of agreement.

Persons Testifying: (In support) Teri Gobin, Tulalip Tribes of Washington; Chelsea Sayles, Quileute Tribe; Mike Lasnier and Ben Brueseke, Suquamish Tribe; and Ron Whitener.

(Other) James McMahan, Washington Association of Sheriffs and Police Chiefs; and Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.