

SENATE BILL REPORT

SB 6146

As Reported by Senate Committee On:
Law & Justice, January 25, 2024

Title: An act relating to tribal warrants.

Brief Description: Concerning tribal warrants.

Sponsors: Senators Dhingra, Kauffman, Robinson, Stanford, Hasegawa, Randall, Wellman, Kuderer, Lovelett, Nobles, Saldaña, Shewmake, Valdez and Wilson, C..

Brief History:

Committee Activity: Law & Justice: 1/22/24, 1/25/24 [DPS, w/oRec].

Brief Summary of First Substitute Bill

- Creates a process for state law enforcement officers and places of detention to deliver fugitives to requesting Indian tribes.
- Creates a process for state law enforcement officers to enforce tribal arrest warrants.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6146 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Valdez.

Minority Report: That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; McCune, Torres, Wagoner and Wilson, L..

Staff: Joe McKittrick (786-7287)

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.

Background: Indian tribes are recognized as unique aggregations possessing attributes of sovereignty over both their members and their territory. They are a separate people possessing the power of regulating their internal and social relations. The several Indian nations are distinct political communities, having territorial boundaries, within which their authority is exclusive. Historically, Congress has acted 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 37.21 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 SB 56 which extended state jurisdiction over certain matters without prior tribal consent.

Presently, Washington has assumed criminal jurisdiction over tribal members and Indian territory. This assumption of jurisdiction does not apply to tribal members when on their tribal lands or allotted lands within an established Indian reservation.

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 Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): The tribal warrants act is created.

Definitions. Non-certified 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), nor been certified by the tribal state court consortium as meeting the requirements of 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 Washington that has either received approval to exercise jurisdiction under TLOA or has otherwise met

the requirements of TLOA as certified by the Office of Attorney General, 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 state authorities for prosecution.

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.

Procedure for Tribal Warrants of Certified Tribes. A procedure is created for state law enforcement officers to enforce the arrest warrants of certified tribes.

The arrest warrants of certified tribes must be accorded full faith and credit by state courts and state law enforcement officers, meaning such courts and officers must treat the arrest warrant of a certified tribe as if it were a Washington State arrest warrant. When a Washington State law enforcement officer arrests a person pursuant to the tribal arrest warrant of a certified tribe, if no other grounds for detention exists under state law, the officer must contact the tribal law enforcement agency that issued the warrant to establish the warrant's validity.

Places of detention within the state must allow certified tribes to place a hold on any inmate subject to a tribal arrest warrant of a certified tribe and require the place of detention to notify the tribe when the release of the person is imminent.

Procedure for Tribal Warrants of Noncertified Tribes. A procedure is created for state law enforcement officers and places of detention to deliver tribal fugitives to the relevant tribal authority.

When a place of detention becomes aware it is housing a tribal fugitive it must provide notice to the tribe who issued the underlying warrant. The tribe may then demand the return of the fugitive by submitting a written demand that alleges the person sought is a tribal fugitive and the tribal court has jurisdiction. The demand must also 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 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 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 tribe. 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.

A procedure is created for state law enforcement officers to arrest individuals subject to the tribal arrest warrant of a noncertified tribes.

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 then be brought to an appropriate place of detention 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.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Clarifies that a tribe meets the definition of certified tribe when the tribe has posted to its public website confirmation that it meets the requirements of the tribal law and order act, as verified by the Office of Attorney General.
- Requires the Office of Attorney General, rather than the tribal state court consortium, to verify tribes meet the tribal law and order act requirements.

- Permits only tribal court representatives who are either certified Washington peace officers or who have been cross-deputized to transport tribal fugitives back to tribal lands.

Appropriation: None.

Fiscal Note: Requested on January 18, 2024.

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

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

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: This has been an issue for decades. This bill closes a loophole that prevents state law enforcement from returning people contacted on state lands with active tribal warrants to the tribal justice system. This bill also protects the due process rights of those who are subject to tribal warrants and insures they are afforded the rights we expect. Washington tribes have recognized state warrants since 1854. Unfortunately, this process is not reciprocated in many areas of the state. This is a constitutionally sound process. Tribes have a vested interest in protecting their members, their communities, and their members are strong partners to their non-tribal neighbors. Warrant reciprocity is a key feature in a functioning relationship between state and tribal law enforcement. This policy is a step in a right direction towards full system integration and insuring no one can escape justice by fleeing tribal lands. Honoring warrants should be a two-way street. Tribes are so closely integrated with their non-tribal neighbors warrant reciprocity is necessary. This is a major step forward in closing community safety gaps. When a person flees from tribal justice onto state land, not only creates a safety issue for the tribe; it creates a safety issue for the community into which the person flees. If these people commit another crime after fleeing tribal lands, it will not happen on tribal lands. It will happen on state lands. Tribes having the ability to extradite those who flee from justice is paramount to a functioning justice system. It is important for tribes to enforce their laws and hold people accountable. Tribes must be able to protect their people, no matter what.

OTHER: While there is a unified desire and focus towards getting warrant reciprocity passed, this bill needs work. No other state has a system such as this. This bill should consider domesticating tribal warrants either by having a state judge sign off on the warrant, or separately creating a crime of fleeing tribal jurisdiction which would allow state officers to respond to these situations under state law. This bill raises concerns for both tribal and state law enforcement. We cannot afford to get this wrong. When transporting a tribal fugitive back to tribal jurisdiction, the bill does not contemplate whose use of force standards would apply, it does not address when state officer would have a duty to intervene when excessive force is being used, nor does it provide protections for law enforcement against civil liability.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Police Chief Mike Lasnier, The Suquamish Tribe; Ben Brueseke, The Suquamish Tribe; Chairwoman, Teri Gobin, Tulalip Tribes of WA; Brian Kilgore, Tulalip Tribes of WA; Ronald Whitener; Melissa Simonsen, Prosecuting Attorney for the Swinomish Indian Tribal Community; Margaret Finkbonner, Victim Advocate for the Swinomish Indian Tribal Community; Chelsea Sayles, Tribal Attorney for the Quileute Tribe.

OTHER: Russell Brown, WA Association of Prosecuting Attorneys; James McMahan, WA Assoc Sheriffs & Police Chiefs.

Persons Signed In To Testify But Not Testifying: No one.