
SUBSTITUTE SENATE BILL 6146

State of Washington

68th Legislature

2024 Regular Session

By Senate Law & Justice (originally sponsored by Senators Dhingra, Kauffman, Robinson, Stanford, Hasegawa, Randall, Wellman, Kuderer, Lovelett, Nobles, Saldaña, Shewmake, Valdez, and C. Wilson)

READ FIRST TIME 01/26/24.

1 AN ACT Relating to tribal warrants; and adding a new chapter to
2 Title 10 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature recognizes that the 29
5 federally recognized Indian tribes with territory inside the state of
6 Washington have a shared interest with the state in public safety,
7 and that continued and expanded cooperation with tribal justice
8 systems will promote that interest. The legislature also recognizes
9 that tribes have, for decades, agreed by treaty and through practice
10 not to shelter or conceal those individuals who violate state law and
11 to surrender them to the state for prosecution. In the interests of
12 public safety and partnership, it is therefore the intent of the
13 legislature to create uniform processes by which the state may
14 consistently reciprocate with tribes the return of those individuals
15 who violate tribal law and seek to avoid tribal justice systems by
16 leaving tribal jurisdiction.

17 The legislature further recognizes it is a constitutional
18 imperative that individuals alleged to have violated criminal laws
19 are afforded the fullest protections of due process including, but
20 not limited to: (1) The right to effective assistance of counsel at
21 least equal to that guaranteed by the United States Constitution; (2)

1 the right of an indigent defendant to the assistance of a licensed
2 defense attorney, at the expense of the tribal government; (3) the
3 right to a criminal proceeding presided over by a judge who is
4 licensed to practice law and has sufficient legal training; (4) the
5 right to have access, prior to being charged, to the tribe's criminal
6 laws, rules of evidence, and rules of criminal procedure; and (5) the
7 right to a record of the criminal proceeding, including an audio or
8 other recording of the trial proceeding. The legislature finds that
9 numerous federally recognized tribes with territory inside the state
10 have systems and processes recognized by the federal government as
11 providing due process to defendants at least equal to those required
12 by the United States Constitution. The legislature also finds that
13 all defendants in tribal courts have the right to petition for a writ
14 of habeas corpus.

15 The legislature additionally recognizes the importance of
16 establishing clear statutory duties when directing peace officers of
17 this state to effectuate new aspects of their work. It is the intent
18 of the legislature that this act set forth procedures by which peace
19 officers and correctional staff of this state must recognize and
20 effectuate tribal arrest warrants.

21 Therefore, the legislature declares the purpose of this act is to
22 expand cross jurisdictional cooperation so that fugitives from tribal
23 courts cannot evade justice by remaining off reservation in
24 Washington's counties and cities, while ensuring that defendants
25 receive the fullest due process protections.

26 NEW SECTION. **Sec. 2.** The definitions in this section apply
27 throughout this chapter unless the context clearly requires
28 otherwise.

29 (1) "Noncertified tribe" means a federally recognized tribe
30 located within the borders of the state of Washington that is
31 requesting that a tribal fugitive be surrendered to the duly
32 authorized agent of the tribe, but has not received approval to
33 exercise jurisdiction under the tribal law and order act of 2010,
34 section 234, codified at 25 U.S.C. Sec. 1302, and which has agreed by
35 treaty or practice not to shelter or conceal offenders against the
36 laws of the state of Washington but to deliver them up to state
37 authorities for prosecution.

38 (2) "Certified tribe" means a federally recognized tribe located
39 within the borders of the state of Washington that has either

1 received approval to exercise jurisdiction under the tribal law and
2 order act of 2010, section 234, codified at 25 U.S.C. Sec. 1302, and
3 has otherwise posted confirmation to the tribal government's public
4 website documenting the tribe has met the requirements of the tribal
5 law and order act as certified by the office of the attorney general,
6 and which has agreed by treaty or practice not to shelter or conceal
7 offenders against the laws of the state of Washington but to deliver
8 them up to state authorities for prosecution.

9 (3) "Peace officer" has the same meaning as in RCW 10.93.020(4).

10 (4) "Place of detention" means a jail as defined in RCW
11 70.48.020, a correctional facility as defined in RCW 72.09.015, and
12 any similar facility contracted by a city or county.

13 (5) "Tribal court judge" includes every judicial officer
14 authorized alone or with others, to hold or preside over the criminal
15 court of a certified tribe or noncertified tribe.

16 (6) "Tribal fugitive" or "fugitive" means any person who is
17 subject to tribal court criminal jurisdiction, committed an alleged
18 crime under the tribal code, and thereafter fled tribal jurisdiction,
19 including by escaping or evading confinement, breaking the terms of
20 their probation, bail, or parole, or absenting themselves from the
21 jurisdiction of the tribal court.

22 (7) "Tribal police officer" has the same meaning as in RCW
23 10.92.010.

24 NEW SECTION. **Sec. 3.** The office of the attorney general shall
25 verify the certification of the tribe, that the tribe meets the
26 requirements of the tribal law and order act of 2010, section 234,
27 codified at 25 U.S.C. Sec. 1302.

28 **I. PROCEDURE FOR TRIBAL WARRANTS OF NONCERTIFIED TRIBES**

29 NEW SECTION. **Sec. 4.** A place of detention shall provide notice
30 to the tribal law enforcement within the jurisdiction of a
31 noncertified tribe who issued an arrest warrant for a tribal fugitive
32 as soon as practicable after learning that the tribal fugitive is a
33 prisoner in the place of detention. The notice shall include the
34 reason for the detention and the anticipated date of release, if
35 known.

1 NEW SECTION. **Sec. 5.** The noncertified tribe whose court issued
2 the warrant of arrest may demand the extradition of the tribal
3 fugitive from a place of detention. The demand will be recognized if
4 in writing, it alleges that the person is a tribal fugitive, the
5 tribal court has jurisdiction, and is accompanied by either:

6 (1) A copy of the complaint, information, or other charging
7 document supported by affidavit of the tribe having jurisdiction of
8 the crime;

9 (2) A copy of an affidavit made before an authorized
10 representative of the tribal court, together with a copy of any
11 warrant which was issued thereupon; or

12 (3) A copy of a judgment of conviction or of a sentence imposed
13 in execution thereof.

14 NEW SECTION. **Sec. 6.** If a criminal prosecution has been
15 instituted against a tribal fugitive under the laws of this state or
16 any political subdivision thereof and is still pending, extradition
17 on a tribal court request under sections 4 through 10 of this act
18 shall be placed on hold until the tribal fugitive's release from a
19 place of detention, unless otherwise agreed upon in any given case.

20 NEW SECTION. **Sec. 7.** (1) The attorney general or prosecuting
21 attorney shall submit all applicable documents specified in section 4
22 of this act to a superior court judge in this state along with a
23 motion for an order of surrender. The motion for an order of
24 surrender shall be served upon the person whose extradition is
25 demanded.

26 (2) A person who is served with a motion for an order of
27 surrender shall be taken before a superior court judge in this state
28 the next judicial day. The judge shall inform the person of the
29 demand made for the person's surrender and the underlying reason for
30 the demand, and that the person has the right to demand and procure
31 legal counsel.

32 (3) The person whose return is demanded may, in the presence of
33 any superior court judge, sign a statement that the person consents
34 to his or her return to the noncertified tribe. However, before such
35 waiver may be executed, it shall be the duty of such judge to inform
36 the person of his or her right to test the legality of the
37 extradition request before an order of surrender may be issued.

1 (4) Any hearing to test the legality of the extradition request
2 shall occur within three judicial days, excluding weekends and
3 holidays, of the person receiving notice of the motion for an order
4 of surrender. The hearing is limited to determining:

5 (a) Whether the person has been charged with or convicted of a
6 crime by the noncertified tribe;

7 (b) Whether the person before the court is the person named in
8 the request for extradition; and

9 (c) Whether the person is a fugitive.

10 (5) The guilt or innocence of the person as to the crime of which
11 the person is charged may not be inquired into by a superior court
12 judge except as it may be necessary to identify the person held as
13 being the person charged with the crime.

14 (6) If the superior court judge determines that the requirements
15 of subsection (4) of this section and section 4 of this act have been
16 met, the judge shall issue an order of surrender to the noncertified
17 tribe. If the noncertified tribe does not take custody of the person
18 pursuant to the order of surrender on the date the person is
19 scheduled to be released from the place of detention or within 48
20 hours of the entry of the order of surrender, whichever is later, the
21 person may be released from custody with bail conditioned on the
22 person's appearance before the court at a time specified for his or
23 her surrender to the noncertified tribe or for the vacation of the
24 order of surrender.

25 NEW SECTION. **Sec. 8.** Subject to the provisions of section 6 of
26 this act, a place of detention shall deliver or make available a
27 person in custody to the noncertified tribe without a judicial order
28 of surrender provided that:

29 (1) Such person is alleged to have broken the terms of his or her
30 probation, parole, bail, or any other release of the noncertified
31 tribe; and

32 (2) The place of detention has received from the noncertified
33 tribe an authenticated copy of a prior waiver of extradition signed
34 by such person as a term of his or her probation, parole, bail, or
35 any other release of the noncertified tribe and photographs or
36 fingerprints or other evidence properly identifying the person as the
37 person who signed the waiver.

1 NEW SECTION. **Sec. 9.** (1) A noncertified tribe that requests
2 extradition pursuant to this act is responsible to arrange the
3 transportation for the tribal fugitive from the place of detention to
4 the tribal court or detention facility. The detention facility and
5 noncertified tribe are encouraged to select the means of transport
6 that best protects public safety after considering available
7 resources. At the request of a noncertified tribe, a city, county, or
8 the governor must engage in good faith efforts to negotiate an
9 agreement to effectuate this subsection.

10 (2) A tribal court representative who is certified as a general
11 authority Washington peace officer under chapter 10.92 RCW, or who is
12 cross-deputized pursuant to chapter 10.93 RCW, may transport a tribal
13 fugitive within the state of Washington pursuant to an order of
14 surrender.

15 NEW SECTION. **Sec. 10.** (1) A peace officer may arrest a person
16 subject to a tribal arrest warrant from a noncertified tribe when the
17 warrant is presented by a tribal court representative or tribal law
18 enforcement officer to the peace officer or a general authority
19 Washington law enforcement agency as defined in RCW 10.93.020 or
20 entered in the national crime information center interstate
21 identification index. The arrested person must be brought to an
22 appropriate place of detention and then to the nearest available
23 superior court judge without unnecessary delay. The superior court
24 judge shall issue an order continuing custody upon presentation of
25 the tribal arrest warrant.

26 (2) The judge shall inform the person appearing under subsection
27 (1) of this section of the name of the noncertified tribe that has
28 subjected the person to an arrest warrant, the basis of the arrest
29 warrant, the right to assistance of counsel, and the right to require
30 a judicial hearing before transfer of custody to the applicable
31 noncertified tribe.

32 (3) After being informed by the judge of the effect of a waiver,
33 the arrested person may waive the right to require a judicial hearing
34 and consent to return to the applicable noncertified tribe by
35 executing a written waiver. If the waiver is executed, the judge
36 shall issue an order to transfer custody under subsection (5) of this
37 section or, with consent of the applicable noncertified tribe,
38 authorize the voluntary return of the person to that tribe.

1 (4) If a hearing is not waived under subsection (3) of this
2 section, the court shall hold a hearing within three days, excluding
3 weekends and holidays, after the initial appearance. The arrested
4 person and the prosecuting attorney's office shall be informed of the
5 time and place of the hearing. The court shall release the person
6 upon conditions that will reasonably assure availability of the
7 person for the hearing or direct a peace officer to maintain custody
8 of the person until the time of the hearing. Following the hearing,
9 the judge shall issue an order to transfer custody under subsection
10 (5) of this section unless the arrested person established by clear
11 and convincing evidence that the arrested person is not the person
12 identified in the warrant. If the court does not order transfer of
13 custody, the judge shall order the arrested person to be released.

14 (5) A judicial order to transfer custody issued under subsection
15 (4) of this section shall be directed to a peace officer to take or
16 retain custody of the person until a representative of the applicable
17 noncertified tribe is available to take custody. If the noncertified
18 tribe has not taken custody within three days, excluding weekends and
19 holidays, the court may order the release of the person upon
20 conditions that will assure the person's availability on a specified
21 date with seven days. If the noncertified tribe has not taken custody
22 within the time specified in the order, the person shall be released.
23 Thereafter, an order to transfer custody may be entered only if a new
24 arrest warrant is issued. The court may authorize the voluntary
25 return of the person with the consent of the applicable noncertified
26 tribe.

27 **II. PROCEDURE FOR TRIBAL WARRANTS OF CERTIFIED TRIBES**

28 NEW SECTION. **Sec. 11.** (1) Any arrest warrant issued by the
29 court of a certified tribe shall be accorded full faith and credit by
30 the courts of the state of Washington and enforced by the court and
31 peace officers of the state as if it were the arrest warrant of the
32 state. A Washington state peace officer who arrests a person pursuant
33 to the arrest warrant of a certified tribe, if no other grounds for
34 detention exist under state law, shall, as soon as practical after
35 detaining the person, and in accordance with standard practices,
36 contact the tribal law enforcement agency that issued the warrant to
37 establish the warrant's validity.

1 (2) A place of detention shall allow a certified tribe to place a
2 detainer on an inmate based on a tribal warrant. For the purposes of
3 this section, detainer means a request by a certified tribe's tribal
4 court, tribal police department, or tribal prosecutor's office, filed
5 with the place of detention in which a person is incarcerated, to
6 hold the person for the certified tribe and to notify the tribe when
7 release of the person is imminent so that the person can be
8 transferred to tribal custody.

9 (3) The privilege of the writ of habeas corpus shall be available
10 to any person detained under this provision.

11 NEW SECTION. **Sec. 12.** This act is not intended to and does not
12 diminish the authority of the state or local jurisdictions to enter
13 into government-to-government agreements with Indian tribes,
14 including mutual aid and other interlocal agreements, concerning the
15 movement of persons within their jurisdiction, does not diminish the
16 validity or enforceability of any such agreements, and is not
17 intended to and does not expand or diminish the authority of the
18 state or local jurisdictions to arrest individuals over whom they
19 have jurisdiction within Indian reservations.

20 NEW SECTION. **Sec. 13.** This chapter may be known and cited as
21 the "tribal warrants act."

22 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act
23 constitute a new chapter in Title 10 RCW.

--- END ---