

HOUSE BILL REPORT

ESHB 1829

As Passed House:

March 5, 2025

Title: An act relating to tribal warrants.

Brief Description: Concerning tribal warrants.

Sponsors: House Committee on Community Safety (originally sponsored by Representatives Lekanoff, Goodman and Pollet).

Brief History:

Committee Activity:

Community Safety: 2/11/25, 2/20/25 [DPS].

Floor Activity:

Passed House: 3/5/25, 61-36.

Brief Summary of Engrossed Substitute Bill

- Makes multiple modifications to procedures for certified and noncertified tribes under the Tribal Warrants Act.

HOUSE COMMITTEE ON COMMUNITY SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Goodman, Chair; Graham, Ranking Minority Member; Burnett, Davis, Farivar, Fosse and Obras.

Minority Report: Without recommendation. Signed by 2 members: Representatives Simmons, Vice Chair; Griffey, Assistant Ranking Minority Member.

Staff: Michelle Rusk (786-7153).

Background:

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.

The Tribal Warrants Act.

In 2024 the Tribal Warrants Act (TWA) was enacted, which creates uniform processes by which the State of Washington may facilitate the return of an individual to a tribe where the individual violated tribal law and sought to avoid tribal jurisdiction by leaving it. Based on the foregoing definitions, specified procedures are established for certified tribes and noncertified tribes. Under the TWA:

- A "tribal fugitive" is any person subject to tribal court criminal jurisdiction who committed an alleged crime under tribal code and thereafter fled tribal jurisdiction.
- "Noncertified tribes" are federally recognized tribes located within the borders of Washington that request a tribal fugitive be surrendered to the duly authorized agent of the tribe, but do not meet TWA certification requirements.
- "Certified tribes" are federally recognized tribes located within the borders of the State of Washington that meet the requirements of the federal Tribal Law and Order Act and have agreed not to shelter or conceal offenders against the laws of the State of Washington but deliver them to state authorities for prosecution.
- A "place of detention" is a jail, correctional facility, and any similar facility contracted by a city or county.

Procedures for Tribal Warrants of Noncertified Tribes—Places of Detention.

When a place of detention becomes aware it has detained a tribal fugitive for whom a noncertified tribe has issued an arrest warrant, the place of detention must provide notice as soon as practical to the noncertified tribe's law enforcement. The noncertified tribe who issued the arrest warrant may demand extradition of the tribal fugitive. A written demand will be recognized if it: (1) alleges the demanded person is a tribal fugitive; (2) alleges the tribal court has jurisdiction; and (3) is accompanied by required documentation.

The Attorney General or county prosecuting attorney must submit the demand and accompanying documents to the applicable superior court with a motion for an order of surrender. The motion must be served on the person whose extradition is demanded, and the person must be taken before a superior court judge the next judicial day. The demanded person may either: (1) consent to returning to the noncertified tribe; or (2) 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;
- is the person named in the request; and
- is a fugitive.

If the superior court determines the foregoing requirements have been met, the judge must issue an order for surrender to the noncertified tribe. If the tribe does not take timely custody, the person may be released with bail conditioned on the person's appearance before the court at a later time for the person's surrender to the noncertified tribe. A tribal court representative who is certified as a general authority Washington peace officer, or cross-deputized, may transport a tribal fugitive within the state under an order of surrender.

A place of detention must deliver or make available a tribal fugitive without an 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 a prior waiver of extradition signed by the person as a term of their probation, parole, bail, or any other release of the tribe.

Procedures for Tribal Warrants of Noncertified Tribes—Arrest.

A procedure was also created for the arrest of individuals subject to a noncertified tribe's arrest warrant. Peace officers may arrest someone subject to a tribal arrest warrant from a noncertified tribe when the warrant is presented to the peace officer 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 TWA articulates further judicial procedures for handling extradition requests in these circumstances.

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 the state. When a state law enforcement officer arrests someone under a certified tribe's arrest warrant, 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 its validity.

In response to a request from a certified tribe, 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 can be transferred to tribal custody. The privilege of the writ of habeas corpus is available to any person detained in the foregoing circumstances.

Immunity.

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

Uniform Criminal Extradition Act.

Washington law establishes procedures for the extradition of individuals from this state who are charged with a crime in another state, and the return of individuals charged with a crime to this state from another state. Specifically, Washington law provides that, if any person in this state is credibly charged with the commission of a crime in another state and the person has fled from justice, or been convicted of a crime in another state and escaped from confinement or broken the terms of their probation or parole, a Washington judge must issue a warrant directed to any peace officer to apprehend the individual wherever they may

be found in this state and bring them before a judge to answer for the charge.

Perjury and Interference with Official Proceedings.

Several felony and misdemeanor offenses address perjury and interference with official proceedings. For example, felony Perjury occurs when an individual in any official proceeding makes a materially false statement which the individual knows to be false under an oath required or authorized by law. The gross misdemeanor of False Swearing occurs if a person makes a false statement, which the person knows to be false, under an oath required or authorized by law. There are also penalties for the offenses of Intimidating or Tampering with a Witness or Juror, and Tampering with Physical Evidence.

Summary of Engrossed Substitute Bill:

The Tribal Warrants Act.

The TWA's definition of "place of detention" is modified to include only adult facilities contracted by a city or county.

Both a certified tribe and noncertified tribe demanding extradition of a tribal fugitive under the TWA shall have standing in any state court hearing testing the legality of an extradition.

Additionally, the court of a tribe may file a tribal warrant with a superior court of the county where the tribe is physically located along with:

1. a certified copy of the charging document;
2. the tribal code provision, or constitutional provision, or federal statute authorizing the exercise of criminal jurisdiction over the tribal fugitive; and
3. identifying information about the tribal fugitive.

A warrant so filed must be timely reviewed by a superior court. If the court makes a finding of probable cause that the tribal fugitive subject to the filed warrant has been charged by the tribe with a crime, the court must issue a state arrest warrant, which expires within six months unless earlier withdrawn. A warrant filed according to the foregoing procedures must be withdrawn once the subject of the warrant submits to the filing tribe's court jurisdiction or has been arrested.

Noncertified Tribes.

Peace officers may arrest someone subject to a noncertified tribe's arrest warrant when it is entered in the Washington Information Center, in addition to a warrant that has been entered in the National Crime Information Center. The arrested person must be brought to the nearest available superior court judge the next judicial day, instead of without unnecessary delay.

A definition of "authenticated copy" is established for purposes of when a place of detention must deliver or make available a tribal fugitive to a demanding noncertified tribe without an order of surrender upon receipt of an authenticated copy of a person's prior waiver of

extradition. "Authenticated copy" means a copy of a prior waiver of extradition signed by an authorized representative of a tribal court attesting the document is a true record of the tribal court waiver of extradition.

Certified Tribes.

Certified tribe procedures are also modified. When a certified tribe has placed a detainer on someone at a place of detention based on a tribal warrant, the place of detention must notify the tribe when release of the person is imminent so that the person can be transferred to tribal custody within 72 hours of their release from all other holds. The writ of habeas corpus available to anyone detained in these circumstances is limited to determining whether the person has been charged by a tribe, is the person named in the certified tribe's demand, and is a fugitive. No inquiry into the guilt or innocence of the person may be made.

Immunity.

In addition to peace officers and peace officer legal supervisors, the following and their legal advisors may also not be held criminally or legally liable for making an arrest or not making an arrest under the TWA if the officer or legal advisor acted in good faith and without malice: (1) limited authority Washington peace officers; (2) specially commissioned Washington peace officers; (3) local or state corrections officers; (4) jails; and (5) legal advisors for the foregoing.

Fugitives and Tribal Warrants.

If any person in this state is credibly charged with the commission of a crime by a federally recognized tribe with territory located in this state, and the person has fled from justice, or been convicted of a crime by any such federally recognized tribe and escaped from confinement or broken the terms of their probation or parole, a Washington judge must issue a warrant directed to any peace officer to apprehend the individual wherever they may be found in this state and bring them before a judge to answer for the charge.

Perjury and Interference with Official Proceedings.

The definitions used for felony and misdemeanor offenses concerning, for example, Perjury, False Swearing, and Intimidating or Tampering with a Witness or Juror are modified to include:

- official proceedings heard before any state, federally recognized tribal, or federal legislative, judicial, administrative, or other government agency, including proceedings where tribal courts take testimony or depositions;
- oaths declared to be true under penalty of perjury as provided under the code of any federally recognized tribe, and as required or authorized by a federally recognized tribe; and
- jurors impaneled by a tribal court.

Definitions are also added for "tribal," "tribal court," and "tribal law."

Appropriation: None.

Fiscal Note: Preliminary fiscal note available. New fiscal note requested on February 21, 2025.

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) This bill is providing a few technical changes but also some substantive ones to a policy enacted last year. For three years, several groups have been working on this policy including tribal representatives, law enforcement, state and tribal prosecutors, state and tribal judges, police chiefs, sheriffs, and more. They all agree this bill is important to Washington State but also provides justice for survivors who are suffering on reservations when a crime has been committed but the perpetrator has fled. Many tribes come to mind when I think about situations when crime has occurred on a reservation and even though a tribal police chief has issued an arrest warrant, the person has fled and the warrant is just left standing. It has taken many years to address this justice gap. These technical changes come as a result of a roundtable of all the previously mentioned parties, who are looking to find better ways to implement this law. Whether you live on or off a reservation, you are still a Washingtonian and this committee recognizes that justice can be found in this state, on and off the reservation.

(Opposed) None.

(Other) The Washington Association of Sheriffs and Police Chiefs has been working on this policy for about 10 years. This bill addresses items that we need to fix, but we need to do it right. Last session there were asks for fixes to the policy. In particular, there has been unanimous agreement that there should be a crime of Tribal Fugitive, and the current bill does not effectuate that. The appropriate analogue is in chapter 10.88 RCW. We also think liability protections need to be included here, and specifically protections from de-certification allegations. There should also be dedicated funding for training.

The Washington Association of Prosecuting Attorneys is "other" on this policy because of a few things that need to be added. Specifically, the Tribal Fugitive from Justice offense needs to be added correctly. We also will continue to ask for the inclusion of a provision relating to costs. Under an extradition order now, the person seeking extradition pays for the costs. In this dynamic, under the TWA we are asking that there's an agreement up front about who will cover the costs. There is also a provision allowing a certified tribe to file a tribal warrant in state court, and we need additional mechanisms around the filing of these warrants. Particularly because we don't want state actors acting on a warrant that appears valid, but is no longer valid. Section 8 of the bill also has language about bringing individuals before a court within one business day of the individual being brought into

custody, and this should be added to section 9.

Persons Testifying: (In support) Representative Debra Lekanoff, prime sponsor.

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

Persons Signed In To Testify But Not Testifying: None.