

Community Safety Committee

HB 1829

Brief Description: Concerning tribal warrants.

Sponsors: Representatives Lekanoff, Goodman and Pollet.

Brief Summary of Bill

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

Hearing Date: 2/11/25

Staff: Michelle Rusk (786-7153).

Background:

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

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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 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 is 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 may 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 is not intended to limit, abrogate, or modify existing immunities for prosecuting attorneys for good faith conduct consistent with statutory duties.

Fugitives of this State.

Washington law provides authority for apprehending someone who is a fugitive of this state.

Specifically, if anyone subject to a warrant for an alleged offense committed in any county escapes from or is out of that county, the sheriff or other officer may pursue and apprehend the person in any county, and may command aid and exercise the same authority as if the sheriff was in their own county.

If an arrested person escapes, the jurisdiction from whose custody the arrested person escaped may immediately pursue and take the person at any time, anywhere in the state, and has the same power to command assistance as given in cases of arrest.

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 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.

Noncertified Tribes.

Noncertified tribe procedures are modified. A 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.

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 person upon whom the detainer is placed may be transferred to tribal custody within 72 hours of the person's 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.

A certified tribe may also file a tribal warrant with any state superior court, which must be enforced by state courts and peace officers as if it were a state arrest warrant.

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 under the TWA if the officer or legal adviser acted in good faith and without malice: (1) limited authority Washington peace officers; (2) specially commissioned Washington peace officers; and (3) local or state corrections officers.

Fugitives and Tribal Warrants.

An equivalent scope of authority to that which is established in Washington's "Fugitives of this State" laws is established in the TWA. If anyone subject to a tribal warrant escapes from the issuing tribe's jurisdiction, the county sheriff or other officer to whom the warrant is directed may pursue and apprehend the individual in any county in the state, and may command aid and

exercise the same authority as a county's own sheriffs for this purpose.

If an arrested person escapes, the jurisdiction from whose custody the person escaped may immediately pursue and retake the person at any time, anywhere in the state, and has the same power to command assistance as given in cases of arrest.

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: Requested on February 5, 2025.

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