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**SUBSTITUTE SENATE BILL 6146**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2024 Regular Session

**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; adding a new chapter to Title  
2 10 RCW; creating a new section; providing an effective date;  
3 providing an expiration date; and declaring an emergency.

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

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

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

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

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

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

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

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

1 (2) "Certified tribe" means a federally recognized tribe located  
2 within the borders of the state of Washington that (a) may impose a  
3 term of imprisonment of greater than one year, or a fine greater than  
4 \$5,000, or both, pursuant to the tribal law and order act of 2010,  
5 section 234, codified at 25 U.S.C. Sec. 1302; and (b) has agreed not  
6 to shelter or conceal offenders against the laws of the state of  
7 Washington but to deliver them up to state authorities for  
8 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.** A certified tribe must provide  
25 certification of section 2(2) (a) and (b) of this act, signed by the  
26 tribe's judicial officer and chief legal counsel, to the office of  
27 the attorney general. The office of the attorney general shall  
28 receive the certification documentation indicating that the tribe  
29 meets the requirements of the tribal law and order act of 2010  
30 section 234, codified at 25 U.S.C. Sec. 1302, and review the  
31 documentation to confirm that it is complete according to the  
32 information provided in the documentation. The office of the attorney  
33 general shall be immune from liability arising out of the performance  
34 of duties under this section, except their intentional or willful  
35 misconduct.

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

1        NEW SECTION.    **Sec. 4.**    A place of detention shall provide notice  
2 to the tribal law enforcement within the jurisdiction of a  
3 noncertified tribe who issued an arrest warrant for a tribal fugitive  
4 as soon as practicable after learning that the tribal fugitive is a  
5 prisoner in the place of detention. The notice shall include the  
6 reason for the detention and the anticipated date of release, if  
7 known.

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

13        (1) A copy of the complaint, information, or other charging  
14 document supported by affidavit of the tribe having jurisdiction of  
15 the crime;

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

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

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

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

33        (2) A person who is served with a motion for an order of  
34 surrender shall be taken before a superior court judge in this state  
35 the next judicial day. The judge shall inform the person of the  
36 demand made for the person's surrender and the underlying reason for

1 the demand, and that the person has the right to demand and procure  
2 legal counsel.

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

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

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

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

17 (c) Whether the person is a fugitive.

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

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

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

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

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

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

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

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

32 (2) The judge shall inform the person appearing under subsection  
33 (1) of this section of the name of the noncertified tribe that has  
34 subjected the person to an arrest warrant, the basis of the arrest  
35 warrant, the right to assistance of counsel, and the right to require  
36 a judicial hearing before transfer of custody to the applicable  
37 noncertified tribe.

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

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

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

## 34 II. PROCEDURE FOR TRIBAL WARRANTS OF CERTIFIED TRIBES

35 NEW SECTION. **Sec. 11.** (1) Any arrest warrant issued by the  
36 court of a certified tribe shall be accorded full faith and credit by  
37 the courts of the state of Washington and enforced by the court and  
38 peace officers of the state as if it were the arrest warrant of the

1 state. A Washington state peace officer who arrests a person pursuant  
2 to the arrest warrant of a certified tribe, if no other grounds for  
3 detention exist under state law, shall, as soon as practical after  
4 detaining the person, and in accordance with standard practices,  
5 contact the tribal law enforcement agency that issued the warrant to  
6 establish the warrant's validity.

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

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

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

26 NEW SECTION. **Sec. 13.** A tribal arrest warrant under this act is  
27 not required to be given prioritization above other warrants.

28 NEW SECTION. **Sec. 14.** (1) A peace officer or a peace officer's  
29 legal advisor may not be held criminally or civilly liable for making  
30 an arrest under this act if the peace officer or the peace officer's  
31 legal advisor acted in good faith and without malice.

32 (2) This act is not intended to limit, abrogate, or modify  
33 existing immunities for prosecuting attorneys for good faith conduct  
34 consistent with statutory duties.

35 NEW SECTION. **Sec. 15.** This chapter may be known and cited as  
36 the "tribal warrants act."



1        NEW SECTION.        **Sec. 16.**        Sections 1 through 15 of this act  
2 constitute a new chapter in Title 10 RCW.

3        NEW SECTION.        **Sec. 17.**        (1) The office of the governor shall  
4 convene an implementation work group to develop processes and  
5 recommendations as needed to ensure the successful implementation of  
6 this act, including verification and processing of warrants under  
7 this act.

8        (2) A representative of the governor's office shall chair the  
9 work group and the governor's office may consult or contract with an  
10 entity with subject matter expertise in criminal jurisdiction in  
11 Indian country to cochair and assist with administering the work  
12 group.

13        (3) The governor's office must ensure that the membership of the  
14 work group is composed of equal parts state and tribal partners and  
15 consists of, but is not limited to, representatives from:

- 16        (a) State and tribal law enforcement;
- 17        (b) Tribal leadership and local government leaders;
- 18        (c) The attorney general's office;
- 19        (d) State and tribal court judges;
- 20        (e) State and tribal court clerks;
- 21        (f) State and tribal jail administrators and directors; and
- 22        (g) Tribal and state prosecuting and defense attorneys.

23        (4) The office of the governor must provide staff support to the  
24 work group and may establish subcommittees as needed.

25        (5) The work group shall:

- 26        (a) Hold its first meeting by July 1, 2024;
- 27        (b) Meet at least monthly; and

28        (c) Submit a report to the governor and appropriate committees of  
29 the legislature by December 1, 2024, with a summary of its work,  
30 which may include recommendations for best practices for  
31 implementation of this act.

32        (6) This section expires December 31, 2024.

33        NEW SECTION.        **Sec. 18.**        This act takes effect July 1, 2025,  
34 except for section 17 of this act, which is necessary for the  
35 immediate preservation of the public peace, health, or safety, or

1 support of the state government and its existing public institutions,  
2 and takes effect May 1, 2024.

--- **END** ---