

SENATE BILL REPORT

ESHB 1555

As Reported by Senate Committee On:
Law & Justice, March 28, 2023

Title: An act relating to extradition of persons to and from Indian jurisdiction.

Brief Description: Concerning extradition of persons to and from Indian jurisdiction.

Sponsors: House Committee on Community Safety, Justice, & Reentry (originally sponsored by Representatives Lekanoff, Goodman, Pollet, Davis and Doglio).

Brief History: Passed House: 3/1/23, 96-0.

Committee Activity: Law & Justice: 3/20/23, 3/28/23 [DPA].

Brief Summary of Amended Bill

- Provides a process for federally recognized Indian tribes within the state of Washington to request extradition of an individual from within the jurisdiction of Washington State or any political subdivision thereof to the jurisdiction of the tribe.
- Provides a process for an individual subject to the extradition request of an Indian tribe to test the legality of the extradition request.
- Requires Indian tribes that request extradition to pay the costs of extradition and transportation.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, 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 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 law permitting the state to assume civil and criminal jurisdiction on tribal lands only after a request from individual Indian tribes. In 1963, the Legislature extended state jurisdiction over certain matters without prior tribal consent.

Washington State has assumed criminal jurisdiction over Indians and Indian territory. However, this assumption of jurisdiction does not apply to Indians 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 State to the full extent authorized by federal law by submitting a resolution to that effect to the Governor. The Governor must then issue a proclamation stating that such jurisdiction applies to all Indians and all Indian territory, reservations country, and lands of the Indian body involved to the same extent that the state exercises criminal jurisdiction elsewhere in the state.

Summary of Amended Bill: A new chapter of Title 10 RCW is created related to tribal fugitive extradition.

Definitions. "Place of detention" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including but not limited to any state corrections institution or any county or city jail.

"Tribal fugitive" means any person who is subject to tribal court jurisdiction who was present within the traditional lands of one of the federally recognized sovereign tribal governments at the time of the commission of an alleged crime under the tribal code, and who thereafter fled the reservation to avoid prosecution.

A federally recognized Indian tribe within the state of Washington may demand the extradition of a tribal fugitive from a place of detention. The request must include:

- a copy of any arrest warrant issued for the individual;
- a copy of any judgement of conviction or sentence imposed, if applicable;
- a copy of the complaint, information, or other charging document; and
- a sworn statement from a tribal court judge that the person claimed has escaped

confinement, or broken the terms of probation, bail, or parole; the individual has been charged with committing a specific offense under the laws of the tribe; and the tribal court may exercise person jurisdiction over the individual under federal law.

The request for extradition must be directed to the county prosecutor of the county in which the city or county jail is located, and to the attorney general for tribal fugitives detained in Department of Corrections facilities. The prosecuting attorney or attorney general must submit the above information to a judge of a court of record in Washington State along with a motion for an order of surrender which must also be served upon the person subject to the extradition request.

The subject of the extradition request must be brought before a judge within one judicial day of service, and the judge must inform the person of the demand, the crime with which the person is charged, and that the person has the right to demand and procure legal counsel. The judge must also inform the person of the right to test the legality of the extradition request before an order of surrender may be issued.

Any hearing on the legality of the extradition request must be limited to determining:

- whether the person has been charged with a crime by the demanding tribe;
- whether the person before the court is the person named in the request for extradition; and
- whether the person is a fugitive.

If the judge issues the order of surrender and the demanding tribe does not take custody of the person on the date the person is scheduled to be released or within 48 hours of the entry of the order, the person may be released from custody with bail conditioned on the person's appearance before the court at a time specified for the person's surrender to the demanding tribe or for the vacation of the order of surrender.

A place of detention must deliver a person in custody to the agent of a demanding tribe without a judicial order if:

- the person is alleged to have broken the terms of the person's probation, parole, bail, or any other release of the demanding tribe;
- the place of detention has received from the demanding tribe an authenticated copy of a prior waiver of extradition signed by such person as a term of his or her probation, parole, bail, or any other release of the demanding tribe and photographs or fingerprints or other evidence properly identifying the person as the person who signed the waiver; and
- the person is not subject to any detainers or arrest warrants issued by any state or municipal court.

The tribe that requests extradition is responsible for the costs of extradition and to arrange transportation. If a criminal prosecution has been initiated against the tribal fugitive, the completion of the criminal prosecution must take precedence over the extradition request.

This act is know as the Tribal Fugitive Extradition Act.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Provides a process for federally recognized Indian tribes within the state of Washington to request extradition of an individual from within the jurisdiction of Washington State or any political subdivision thereof to the jurisdiction of the tribe.
- Provides a process for an individual subject to the extradition request of an Indian tribe to test the legality of the extradition request.
- Requires Indian tribes that request extradition to pay the costs of extradition and transportation.

Appropriation: None.

Fiscal Note: Available.

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 Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill is about justice. It provides for extradition to and from tribal lands. The bill can impact no more than 10 tribes. We need to ensure that tribal warrants are being honored. Seven percent of the state is defined as Indian Country. Currently, many warrants for the most severe crimes committed on tribal lands are not being pursued when the person leaves tribal lands. This bill protects victims and closes a gap in the criminal justice system by bringing reciprocity between the state and tribes.

CON: While the goals of this bill are admirable, it goes about solving this issue in the wrong way. This one-size fits all will not work for every tribe in the state. Extradition should be the result of treaties between the state and the specific tribes. As this is currently written, this bill will upset the apple cart for many tribes that already have an extradition process in place.

OTHER: Typically, extradition is handled by treaty. Each tribe should be able to enter into an agreement with the Governor. There should be one state compact that individual tribes should be able to opt in or opt out of.

Persons Testifying: PRO: Representative Debra Lekanoff, Prime Sponsor; Taylor Gardner, WA Assn of Sheriffs and Police Chiefs; Earl Cowan, Swinomish Indian Tribal Community; Melissa Simonsen, Swinomish Indian Tribal Community; Maggie Finkbonner,

Swinomish Indian Tribal Community; Chief Mike Lasnier, Suquamish Tribal Police Department.

CON: Brian Kilgore, Tulalip Tribes of WA; Josh Weiss, Snohomish County.

OTHER: Russell Brown, WA Association of Prosecuting Attorneys.

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