

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6146

68th Legislature
2024 Regular Session

Passed by the Senate March 5, 2024
Yeas 48 Nays 0

President of the Senate

Passed by the House February 28, 2024
Yeas 94 Nays 0

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6146** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6146

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 with 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** ---