

Appendix A

ADDENDUM

Preliminary Report

Tribal Warrants Act Work Group

January 2025

Office of Governor Jay Inslee

In 2024, the Legislature passed SSB 6146, the Tribal Warrants Act (TWA), codified at RCW Chapter 10.32. The Act's declared purpose is "to expand cross-jurisdictional cooperation so that fugitives from Tribal courts cannot evade justice by remaining off reservation in Washington's counties and cities, while ensuring that defendants receive the fullest due process protections." RCW [10.32.005](#).

SSB 6146 required the Governor's Office to convene a work group to develop processes and recommendations to ensure its successful implementation. The legislation also required the work group to submit a report summarizing its work to the Governor and legislative committees by December 1, 2024. In December 2024, the Governor's Tribal Warrants Act Work Group (Work Group) submitted a detailed preliminary report to the Legislature, after which it continued to meet. The Work Group met on November 21, 2024; December 12, 2024; and January 6, 2025; and adopted additional recommendations:

A summary of these additional recommendations is as follows with more detail provided below:

The following entities should create these deliverables:

- Tribal partners, in collaboration with state counterparts, may wish to draft sample warrants that include contact information and key identifiers.
- Washington State Patrol (WSP) may wish to work closely with Tribal law enforcement, prosecutors, and court staff as WSP makes changes to the Washington Criminal Information System and National Criminal Information System to support implementation of the TWA.

A trailer bill should be drafted that includes, in addition to the recommendations of the preliminary report:

- Providing the same habeas corpus relief for Tribal fugitives with warrants regardless of whether they are from a certified or non-certified Tribe.
- Authority for a Tribe to "pre-register" a warrant with the courts as a violation of the Crime of Tribal Fugitive.
- A provision providing that Tribal fugitives may be held up to 72 hours based solely on a certified Tribe's warrant (and/or corresponding violation of the Crime of Tribal Fugitive).
- Language that clarifies that the TWA applies only to Tribal fugitives who are adults (18 years old or older) at the time of their contact with Washington state law enforcement or corrections facilities, and that "place of detention" indicates that the TWA does not apply to juvenile detention facilities.

- Provisions in Section 10 related to the presentation or entry of warrants into national databases should be amended to include relevant state databases (Washington Crime Information Center) and the correct name for the national database (National Crime Information Center).
- An amendment to RCW 9A.72 to ensure that the state of Washington can prosecute perjury of Tribal law enforcement officers.
- An appropriation to support the appointment of public defenders for Tribal fugitives.

The Work Group has identified additional actions that other entities may wish to pursue for further implementation of the Act:

- The Washington State Supreme Court should consider authorizing Tribal public defenders who are not licensed to practice in the state of Washington to appear on behalf of their clients in state court.
- Tribal prosecutors should ensure that all waivers of extradition are executed in open court.
- Tribes and counties with significant geographic or population overlap should consider entering into interlocal agreements to effectuate the TWA.
- Washington state law enforcement should, when possible, consider contacting Tribal law enforcement/prosecution and check for booking restrictions before making an arrest.
- State prosecutors, public defenders, and judges, as well as their Tribal counterparts should seek training on bonds and the TWA's impact on defendants who may need to post bail.
- Washington State Patrol (WSP) may wish to work closely with Tribal law enforcement, prosecutors, and court staff as WSP make changes to the Washington Criminal Information System and National Criminal Information System database.
- The Legislature should consider convening a work group in the future to explore the possibility of revising the Act to include juveniles and juvenile detention facilities.

For a full summary of the TWA, description of Work Group processes, and Work Group roster, see the December 2024 Tribal Warrants Work Group Preliminary Report, attached as Appendix A.

Recommendations

The following entities should create these deliverables:

- **Tribal partners, in collaboration with state counterparts, may wish to draft sample warrants that include contact information and key identifiers.** To promote timely responses by state law enforcement, Tribal warrants should include contact information for the Tribe. This will promote necessary collaboration around arrest, jail, and transportation. In addition, Tribal warrants should include key identifiers (name, DOB, Tribal membership, height, weight, race, sex, gender, hair and eye color) as well as the possibility of digital photos, such as a driver license or booking photo, to ensure lawful and timely identification.
- **Washington State Patrol (WSP) may wish to work closely with Tribal law enforcement, prosecutors, and court staff as WSP makes changes to the Washington Criminal Information System and National Criminal Information System to support the implementation of the TWA and information sharing from the data entry source of the Tribal Access Program.** Getting Tribal input on potential changes to these databases as well as what information will be provided and/or be made available to state law enforcement officers will promote smoother implementation of the TWA. This should include joint trainings open to state and Tribal partners.

A trailer bill be drafted that includes the following, in addition to the recommendations of the Work Group's preliminary report that was issued in December 2024:

- **A provision that provides the same habeas corpus relief for Tribal fugitives with warrants regardless of whether they are from a certified or non-certified Tribe.** This will ensure fairness and parity for Tribal fugitives without unnecessarily burdening courts. This is best accomplished by amending RCW 10.32.100(3) to include "The issues in the habeas corpus proceeding shall be limited to those identified in RCW 10.32.060(4) and (5)."
- **A provision that creates authority for a Tribe to "pre-register" a warrant with the courts as a violation of the Crime of Tribal Fugitive.** This will allow for speedy state responses, particularly for late-night or emergent issues when law enforcement seeks guidance, but a Tribal representative is not available.
- **A provision providing that Tribal fugitives may only be held based on a certified Tribe's warrant (and/or corresponding violation of the Crime of Tribal Fugitive) for up to 72 hours.**

This provision, which mirrors timelines for non-certified Tribes and for state-to-state extraditions, is intended to balance the interest of the state and Tribes, while also protecting the due process rights of Tribal fugitives. This provision should clarify that the timeline begins upon notice to a Tribal partner and culminates

when transport begins, whether provided by the state or Tribe.

- If the new Crime of Tribal Fugitive is adopted, an individual held on a warrant from a certified Tribe will go before a state judge the next judicial day after arrest for a preliminary appearance on the Tribal Fugitive charge.
 - WAPA notes that there must be a legal basis, such as the new Tribal Fugitive crime, for holding a person up to 72 hours. WAPA suggests that the recommended 72-hour provision apply when there is a pre-signed waiver of extraction or “after the fugitive has executed a waiver of extradition, has been denied habeas corpus relief by the superior court, or the superior court has approved extradition.”
- **An amendment that clarifies that the TWA applies only to Tribal fugitives who are 18 or older when they come into contact with Washington state law enforcement or correctional facilities.** The TWA was not drafted with detailed discussions of how it would or should be implemented by the juvenile justice system. The Work Group believes that effective implementation of the TWA regarding juveniles would require in-depth future conversations with relevant juvenile stakeholders. Current language could be interpreted to require state juvenile detention facilities to comply with the Act. The definition of “place of detention” (RCW 10.32.010) should be clarified to indicate that it does not apply to juvenile detention facilities by adding the following: “any similar adult facility contracted by a city or county.”
 - **Amendments to provisions related to the presentation or entry of warrants into national databases to also include relevant state databases (Washington Crime Information Center) and the correct name for the national database (National Crime Information Center).** This corrects a technical oversight and is best accomplished by amending RCW 10.32.090 to say, “or entered in the National Crime Information Center interstate identification index or Washington Crime Information Center.”
 - **An amendment to RCW 9A.72 to specifically allow the state of Washington to prosecute perjury of Tribal law enforcement officers.** The Fourth Amendment requires all search and arrest warrants to be supported by “Oath or affirmation.” Ultimately, the “true test” of whether the required “Oath or affirmation” was made is whether the procedures followed were such that perjury could be charged if any material allegation contained therein is false. United States v. Bueno-Vargas, 383 F.3d 1104, 1111 (9th Cir. 2004), cert. denied, 543 U.S. 1129 (2005).

Because Tribes, in many instances, lack the authority to charge non-native law enforcement officers with a crime, RCW 9A.72. should be narrowly amended to ensure that warrants based on the declarations or affidavits of non-native Tribal law enforcement officers fulfill the Fourth amendment oath requirements.

- **An appropriation to support the appointment of public defenders for Tribal fugitives.** Individuals are not constitutionally guaranteed public defenders in extradition proceedings. However, to the extent that it is a best practice, and judges are encouraged to appoint them, the Legislature should provide an appropriation.
 - WAPA recommends amending RCW 2.70.020(1) so that recruitment, appointment, and payment for public defenders is handled by the Office of Public Defense.

The Work Group has identified additional actions that other entities may wish to pursue to further implementation of this act:

- **The Washington State Supreme Court should consider authorizing Tribal public defenders who are not licensed to practice in the state of Washington to appear on behalf of their clients in state court.** Not all Tribal public defenders are authorized to practice in the state courts, as they need only be authorized to practice in the relevant Tribal bar. As described in the recommendations above, it may be advantageous to have a Tribal public defender appear on behalf of their Tribal client in both Tribal and state proceedings under the TWA to provide continuity.
- **Tribal prosecutors should ensure that all waivers of extradition are performed in open court.** Washington state law requires that waivers of extradition be made in open court. To ensure that state courts honor the waivers of Tribal fugitives, Tribes must ensure that these waivers are made in open Tribal court proceedings. Tribes may wish to draft a standard waiver form, and all waiver forms used by Tribes should clearly indicate that the waiver was performed in open court.
- **Tribes and counties with significant physical or population overlap (or patterns of arrest or detention) should enter into interlocal agreements to cover jail costs and other cooperative practices under the TWA.** This will promote further collaboration and cost savings. Where there is no MOU, local jails currently detain Tribal fugitives and other fugitives for short periods of time as a courtesy.
 - WAPA recommends that unless there is an MOU, the presumption should be that the Tribe or the state bears the cost of detention of a Tribal fugitive, not local jails.
- **Washington state law enforcement should, when possible, consider contacting Tribal law enforcement or prosecutors before making an arrest under the TWA.** This provides these law enforcement agencies the ability to partner and determine if the Tribe is interested in the Tribal fugitive, able to support jail costs, and/or able to provide transport back to Tribal jurisdiction in a timely manner.
- **Washington state law enforcement should, when possible, consider contacting local jails to check on booking restrictions before making an arrest under the TWA.** This is already common practice for many law enforcement officers but would ensure individuals are not

unnecessarily arrested when there is no ability to detain them and/or when immediate Tribal transportation is not available (see recommendation above).

- **State prosecutors, public defenders, and judges, as well as their Tribal counterparts should seek training on bonds and the TWA's impact on defendants who may need to post bail.** Bonds are a specialized area of law, and the practices of bondspersons are nuanced and different county by county (as well as among Tribes). Specialized training is necessary for all court officers to effectively implement the TWA in a manner that is fair to defendants.
- **The Legislature should consider convening a work group in the future to explore the possibility of including juveniles and juvenile detention facilities in the TWA.** Juveniles represent the future of Tribes. Their safety, well-being, and rehabilitation is a stated priority for many members of the Work Group. With that in mind, the Work Group recommends that the Legislature explore the expansion of the TWA to juveniles based on the lessons learned in the first few years of its rollout related to adults. The subsequent work group should include stakeholders from the juvenile offender and child welfare systems.