NATIONAL

MANUAL ON EXTRADITION

AND INTERSTATE RENDITION

NATIONAL ASSOCIATION OF EXTRADITION OFFICIALS

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MANUAL ON INTERSTATE EXTRADITION

I. PREFACE

One of the purposes of the National Association of Extradition Officials is to promote uniformity in the interpretation and application of extradition laws and procedures amongst state extradition officials.

When difficulties arise between officials of different states with respect to the extradition process generally or in relation to a particular case, it is often due to varying interpretations and applications of extradition laws and procedures given by the respective states. Some variation, of course, is inevitable inasmuch as many states have amended their versions of the Uniform Criminal Extradition Act and, even without such amendments, judicial and administrative interpretations of the act have rendered it far from "uniform."

In an effort to bring as much consistency and uniformity into the interstate rendition process as possible, the National Association of Extradition Officials has prepared this manual for use by all states. The information contained herein should prove useful to law enforcement personnel, prosecutors, correctional officials and state-level officials in attorney generals' and governors' offices. This manual is not intended to reflect every state's particular legal requirements, procedures or policies. Rather, its purpose is to set forth a more general or "mainstream" approach to the extradition process, with occasional references to certain practices, requirements, etc., of particular states where they vary significantly from the "norm."

This manual contains a summary of the law and procedures to be followed in most matters relating to interstate rendition, including extradition, the Interstate Agreement on Detainers, the Interstate Compact on Juveniles, the Uniform Act for Out-Of-State Witness Act, the Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act, and the Uniform Act for Out-of-State Probationer and Parolee Supervision. In addition, a short description of the procedures to be followed in international extradition is included as an appendix. Suggested forms have been attached wherever available.

II. INTERSTATE EXTRADITION

A. DEFINITIONS

1. ***Extradition*** is the surrender, by one nation or state to another, of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which being competent to try and punish him, demands the surrender. (35 C.J.S. *Extradition*, § 1 (1960); 21 Cal.Jur.2d *Extradition*, § 1 (1955).)

2. ***Asylum State*** is where the fugitive or defendant has taken refuge or is found.

3. ***Demanding State*** is the state which seeks to extradite the fugitive.

4. ***Governor*** or ***Executive Authority*** means any person performing the functions of ***governor*** under state law.

5. ***Fugitive*** means one who is accused or convicted of a crime in one state and is later found in another state, regardless of the manner of or reason for his departure from the first state.

6. ***Magistrate*** usually means any judicial officer as defined under applicable state statutes or any person certified to be a magistrate under the laws of the demanding state.

7. ***Extraditable Offense*** refers to any criminal offense, felony or misdemeanor, regardless of whether the offense is a crime in the asylum state.

8. ***Application for Requisition*** is the formal written request from the prosecutor to the governor for a requisition upon the governor of the asylum state for the return of a fugitive.

9. ***Requisition*** refers to the formal demand made by the governor of the demanding state upon the governor of the asylum state and upon which the governor's warrant is based.

10. ***Fugitive Complaint*** is the document filed in the asylum state prior to receipt of the governor's warrant charging the person arrested with being a fugitive from justice.

11. ***Fugitive Warrant*** is the arrest warrant issued by the local court in the asylum state prior to receipt of the governor's warrant authorizing the

arrest and detention of the fugitive pending receipt of the governor's warrant.

12. ***Governor's Warrant*** is the warrant issued by the governor of the asylum state commanding that the fugitive be arrested and delivered over to designated agents of the demanding state.

13. ***Waiver of Extradition*** means waiver by the accused of the issuance and service of a governor's rendition warrant, and consent to be transported to the demanding state.

B. SOURCE OF INTERSTATE EXTRADITION LAW

1. The basic source of all extradition law is the United States Constitution, Article IV, Section 2, Clause 2, which provides:

> "2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime."

The Supreme Court has held that this constitutional provision is not self-executing.[1/]

Consequently, Congress enacted an implementing statute, 18 United States Code section 3182, which provides:

> "Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and

1. *Kentucky v. Dennison* (1860) 65 U.S. 66*; Roberts v. Reilly* (1885) 116 U.S. 80; *Robb v. Connolly* (1884) 111 U.S. 624.

> shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged."

Together, the constitutional and federal statutory provisions are referred to as the ***Federal Act***. Note that the Federal Act governs extradition between states or between a territory or district and a state. The act has no application to the transfer of individuals between a state and a federal jurisdiction.[2/] Note also that the Constitution provides for extradition for "treason, felony or other crime" as defined by the laws of the demanding state, thereby including misdemeanors.[3/]

The courts have said that insofar as the Federal Act applies to any given extradition, it controls, and while states may provide for extradition in situations not governed by federal law, they may not impose undue restrictions upon the constitutional right of sister states to seek extradition under federal law.[4/]

Essentially, this means that the Federal Act prescribes maximum standards for extradition so that no state may constitutionally impose additional requirements for extradition.[5/] However, where the Federal Act does not apply, the states are free to permit or deny extradition according to their own standards. In addition, since the Federal Act only prescribes maximum standards, states are free to

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2. *Derengowski v. United States* (8th Cir. 1968) 404 F.2d 778, 780, cert. den. 394 U.S. 1024; *Davis v. Rhyne* (Kan. 1957) 312 P.2d 626, 630; *State v. O'Neill* (Ariz. App. 1977) 570 P.2d 811; *Thomas v. Levi* (E.D. Pa. 1976) 422 F.Supp. 1027; *McCallum v. State* (Ala. Cr. App. 1981) 407 So.2d 865.

3. *Appleyard v. Massachusetts* (1906) 203 U.S. 222, 227; *Ex parte Reggel* (1885) 114 U.S. 642, 649-650; *Brown v. Sharkey* (R.I. 1970) 263 A.2d 104, 107, fn. 1; *State ex rel. Hansen v. Skipper* (Ore. App. 1995) 904 P.2d 1079.

4. *State v. Luster* (Fla. 1992) 596 So.2d 454, 455; *Yates v. Gilless* (Tenn.Cr.App. 1992) 841 S.W.2d 332, 335; *Smith v. Idaho* (9th Cir. 1967) 373 F.2d 149, 154; *Walden v. Mosley* (D.C. Miss. 1970) 312 F.Supp. 855, 859; *In re Tenner* (1942) 20 Cal.2d 670, 678, cert. den. 314 U.S. 597; *South Dakota v. Brown* (1978) 20 Cal.3d 765, 771; *In re Morgan* (1966) 244 Cal.App.2d 903, 910; *In re Cooper* (1960) 53 Cal.2d 772, 775. Extradition provisions have been enacted for the benefit of the states, not the fugitives. (See *Nichols v. McKelvin* (5th Cir. 1995) 52 F.3d 1067; *Siegel v. Edwards* (5th Cir. 1978) 566 F.2d 958, 960; *State v. Gay* (Iowa 1995) 526 N.W.2d 294, 296.)

5. *People ex rel. Schank v. Gerace* (1997) 661 N.Y.S.2d 403, 408; *State v. Luster* (Fla. 1992) 596 So.2d 454, 455; *Breckenridge v. Hindman* (Kan.App. 1984) 691 P.2d 405, 408; *Beauchamp v. Elrod* (Ill.App. 1985) 484 N.E.2d 817, 819.

require ***less*** of a showing than would be required under the Federal Act, although to do so the state must have legislation.

2. Pursuant to the authority of each state to enact legislation in aid of the Federal Act, virtually all states and the territories of Puerto Rico and the Virgin Islands have enacted either the ***Uniform Criminal Extradition Act (UCEA)*** or similar provisions.[6/] The major distinctions between the UCEA and the Federal Act are: (1) a specific provision is made for the extradition of a convicted person in that a requisition is sufficient if it is supported by a certified copy of a judgment or sentence together with a statement by the executive authority of the demanding state that the person has escaped or violated the terms of his parole or probation;[7/] (2) extradition is now possible even though the accused was never personally present in the demanding state, since he may be extradited if he did acts outside that state intentionally resulting in a crime in the demanding state;[8/] (3) procedures have been established for the orderly rendition of a fugitive, requiring arraignment and an opportunity to petition for a writ of habeas corpus;[9/] and (4) procedures have been established for the detention of a fugitive for a period of time to allow the respective governors to issue their requisitions and rendition warrants.[10/]

3. A third basic source of extradition law is the Uniform Interstate Family Support Act (UIFSA), which applies specifically to persons who are charged with but not yet convicted of, failing to provide support as provided by law. In most essential respects, UIFSA restates the provisions of its predecessor statute, the Uniform Reciprocal Enforcement of Support Act (URESA).[11/] Basically, the

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6. The original version of the UCEA along with annotations may be found in Volume 11, Uniform Laws Annotated, Master Edition (2003), Appendix I, pages 294-660. Only Louisiana, North Dakota and South Carolina have not enacted the UCEA, however these states have enacted extradition laws which provide for procedures similar to those set forth in the UCEA. (See Appendix A for statutory references.)

7. Section 3 of the UCEA.

8. Section 6 of the UCEA.

9. Section 10 of the UCEA.

10. Sections 13-18 of the UCEA.

11. At the time this manual was originally published, most states had enacted UIFSA. It is anticipated that eventually the new act will be universally adopted. The original version of UIFSA is found in Volume 9, Uniform Laws Annotated, Master Edition. Those states which have not yet enacted UIFSA have similar provisions in the Uniform Reciprocal Enforcement of Support Act (URESA). See Appendix B for statutory references.

act provides that the extradition provisions of the Federal Act and the UCEA apply, but that the Governor of the asylum state may require a showing that the civil remedies of the act have been tried or would be futile. In addition, the UIFSA expressly eliminates any requirement that the defendant has fled from the justice of the demanding state. A discussion of UIFSA appears at pages 21-25.

4. Although not extradition, the following acts may also accomplish the return of a person:

   a. Interstate Agreement on Detainers, discussed at pages 72-92.

   b. Uniform Act to Secure Attendance of Witnesses from Without the State in Criminal Cases, discussed at pages 93-96.

   c. Uniform Act for the Rendition of Prisoners as Witnesses in Criminal Proceedings, discussed at page 96-97.

   d. Uniform Act for Out-of-State Probationer or Parolee Supervision and Interstate Compact for Adult Offender Supervision, discussed at pages 97-99.

   e. Interstate Compact on Juveniles, discussed at pages 99-103.

C. REFERENCE MATERIALS ON EXTRADITION

1. Narrative discussion of extradition may be found in any of the following: 20 Cal.Jur.2d *Extradition*, pages 185-247; 31A Am. Jur.2d *Extradition*, pages 677-806; 35 C.J.S. *Extradition*, pages 259-352; "Handbook on Interstate Crime Control" (Council of State Governments) (1966) pages 128-157.

2. Cases dealing with extradition may be found in any of the following:

   a. Annotations to each state's version of the UCEA.

   b. Title 18, United States Code Annotated, section 3182.

   c. Volume 11, Uniform Laws Annotated, Appendix I, pages 294-660.

   d. Under the topical heading "Extradition and Detainers" in any of the digests, including McKinney's, Federal Practice Digest, the Decennials, and the United States Supreme Court Digest (Lawyer's Edition).

e. In any of the West's Digests, under the following key numbers within the general topic heading "Habeas Corpus": 21; 85.1(4); 85.2(4); 85.8(1); 92(2); 103.

3. The National Association of Extradition Officials publishes a law report each year at its summer conference consisting of an accumulation of cases pertaining to extradition which have been decided within the year. As members of the Association, Attorneys General and governors receive a copy of the report and may be contacted for assistance in locating recent cases through reference to that report.

D. OVERVIEW OF THE EXTRADITION PROCESS

The purpose of this section is to describe in brief narrative form the various stages in the extradition process and its relation to law enforcement.

1. When an arrest warrant has been issued and the defendant fails to appear, the prosecutor generally makes a determination whether the particular defendant should be returned through the extradition process if he is found in another state. If so, the warrant is lodged with the National Criminal Information Center (NCIC), a nationwide computer service which is available to all law enforcement agencies. (For information on federal fugitive (UFAP) warrants, see Appendix C.)

   As a general rule, the extradition process begins when a local law enforcement officer in the asylum state learns that there is an out-of-state warrant against a person whom he has located within his jurisdiction. Under the UCEA, the officer may immediately take the person into custody upon his reasonable belief that the person is charged with a crime in another state, provided that the offense is a felony. (UCEA, § 14.) As a practical matter, if the officer takes the fugitive into custody based on information of an outstanding charge, the first thing he should do is contact the prosecuting authorities of the demanding state to determine if they will proceed with extradition. If the state courts honor presigned waivers of extradition, the officer should also inquire whether the person signed such a waiver as a condition of release on bail, probation or parole in the demanding state. If so, he should request that certified copies of the pertinent documents be sent immediately. If there was no prior waiver and the demanding state's authority indicates it will proceed with extradition, the officer should inform the person of that fact and ask him whether he wishes to waive extradition.

2. If the person indicates he wishes to waive extradition, the officer should take him before a local magistrate and have him execute a written waiver. (UCEA, § 25-A.) If he does not wish to waive extradition, the law enforcement officer should immediately prepare a complaint charging the person with being a fugitive. (UCEA, § 13.) He should request that a certified copy of the charging document and warrant in the demanding state be forwarded to him immediately. Also, he should send booking photographs and fingerprints to the demanding state, to be returned immediately with an identifying affidavit for possible use in an identity hearing, and for inclusion in the formal extradition papers.

3. As soon as possible after the person's arrest, the fugitive complaint should be filed and the person should be taken before a magistrate for arraignment on the complaint. (UCEA, §§ 13, 14.) Where possible, a certified copy of the charging document and warrant from the demanding state should be attached to the complaint in support thereof. If those documents are not available at the time the complaint is filed, as they often are not, the complaint should state that the officer reasonably believes that there is an outstanding criminal charge in the demanding state, that the demanding state has indicated it will proceed with extradition, and that a copy of the warrant or charges will be submitted to the court as soon as it is received from the demanding state. On the basis of this complaint, the court will then issue its commitment order ("warrant," UCEA, § 15), which serves as the basis for maintaining custody of the person pending formal extradition. Under certain circumstances, the court may release the person on bail at this time.

4. The UCEA also provides that, instead of taking the person into custody immediately, the law enforcement officer may first file a fugitive complaint and seek a fugitive warrant from the court in the asylum state. (UCEA, § 13.) Generally, this procedure is preferable if the person is reasonably well established in the asylum community and there is little likelihood that he will flee prior to issuance of the warrant. Also, this procedure is required if the person is charged in the demanding state with less than a felony offense. Before filing the complaint, the officer should contact the demanding state to determine if it intends to seek extradition (or if there was a presigned waiver). If so, the officer should request that certified copies of the charging document and warrant be sent to him so that they can be attached to the fugitive complaint. The fugitive should be taken before a magistrate at the earliest opportunity for

arraignment on the fugitive complaint. However, before taking him to court, the law enforcement officer should first ask the person if he wishes to waive extradition and, if so, the person should execute such a waiver before the magistrate at the time of arraignment.

5. Arraignment generally occurs in the magistrate's court. The court should generally state the name of the accused as it appears on the complaint or fugitive warrant and ask if that is the true name of the person brought before the court. If the person admits his identity, the court then should indicate the reason for the arrest and that the person has the right to have an attorney present, and it should appoint counsel if the person is indigent. After counsel has had an opportunity to review the fugitive complaint, the court may more fully explain that the person is charged with being a fugitive from justice on the basis of the charges and warrant of the demanding state. The court should then order the accused held in custody or released on bail pending extradition. (UCEA, § 15.) The case should be continued for 30 days in order to allow time to complete formal extradition.

6. If the accused denies being the person wanted in the demanding state, an identity hearing may be required to determine if there is probable cause to believe he is the person wanted.

7. At this point, either the prosecutor or the law enforcement officer should again contact the demanding state and indicate that the matter has been continued and that the fugitive will not waive extradition. The prosecutor in the demanding state should begin assembling extradition documents immediately. If it appears that the prosecutor cannot complete the extradition papers within the 30-day time period, he should notify officials in the asylum state of the delay and that he is proceeding with diligence and fully intends to continue extradition efforts.

   If the case is called again at the end of the 30-day period, and if the governor of the asylum state has not yet issued his warrant of rendition, the court should entertain a motion to continue the matter for up to an additional 60 days. (UCEA, § 17.) The asylum state prosecutor should indicate that he has confirmed that the demanding state is proceeding with extradition and that more time is needed. Since documents and procedures under the extradition law are to be liberally construed so as to accomplish extradition, the magistrate should, on a showing that the asylum state is proceeding with

diligence, grant whatever continuances are necessary for completion of the process.

8. The first step in the formal extradition process is the application to the governor of the demanding state for a requisition upon the governor of the asylum state for a warrant of rendition. The application is prepared by the prosecutor responsible for trying the charges in the demanding state and must be supported by duly certified copies of one of the charging documents specified in the extradition law and any warrant that has been issued based upon those charges. This application is sent directly to the governor of the demanding state, who then generally forwards it to the attorney general for approval as to its legal sufficiency. If the application is in proper legal form, the attorney general indicates his approval to the governor and the governor then executes his formal requisition upon the asylum state governor. (UCEA, § 23.)

9. When the formal requisition is received by the asylum state governor, he generally also forwards it to his attorney general for advice on its legal sufficiency. If the requisition is in proper form, the asylum state governor then issues his warrant of rendition, commanding the arrest and rendition of the accused to a designated agent of the demanding state.[12/]

   The warrant is sent to the law enforcement agency having custody of the accused. The warrant is an original warrant of arrest and supersedes the fugitive warrant. Therefore, the warrant must be served and the accused rearraigned at the earliest opportunity on the governor's warrant. It is not necessary to file a new fugitive complaint before arraignment on the governor's warrant.

10. At the arraignment on the governor's warrant, the court should inform the accused that a demand has been made for his rendition to the demanding state and the governor has issued a warrant commanding that rendition. The person must be advised that he has a right to the assistance of counsel and that, if he desires to challenge the legality of the extradition, a reasonable time will be allowed in which to file a petition for writ of habeas corpus. Because the grounds which can be

12. At any time prior to issuance of the governor's rendition warrant, the fugitive may choose to waive extradition, in which case he should be taken before a magistrate for execution of a formal waiver. Once the governor issues his warrant, however, a waiver may not be accepted.

raised are very limited, 10 days is usually sufficient time in which to file a petition. (UCEA, § 10.)

11. When all challenges to the extradition have been completed, the lower court should order the accused bound over for delivery to agents of the demanding state. The asylum state prosecutor or law enforcement officer should immediately contact the demanding state prosecutor and arrange for a date upon which to transfer custody. Once the fugitive is delivered over to the agent, the case should be dismissed.

E. FORMS AND PROCEDURES IN THE DEMANDING STATE

1. *Introduction*

NOTE: If the accused signed a waiver of extradition as a condition of release on bail, probation or parole before leaving the demanding state, formal extradition may not be required to effect his return. Inquiry should be made of asylum state authorities whether their state will honor such "presigned" waivers.

The initial step by the demanding state in the formal extradition process where a fugitive is found in another state is to prepare an application for requisition. An application may be submitted to the governor by a district attorney or other local prosecutor, by the attorney general, or by the appropriate correctional or parole authorities if the fugitive is an escapee or parole absconder. In order to be legally sufficient, the application must be supported by certain other documents noted below.[13/]

2. *Initial Decision to Seek Extradition*

Extradition is not sought in every case.[14/] Considerations of practicality and public policy govern prosecutors' decisions to seek a fugitive's return.

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13. For some specific requirements of particular states, see Appendix D. For the number of sets of documents which must be submitted, see Appendix E. Procedures to be followed in international cases are outlined in Appendix F.

14. The decision to extradite is within the discretion of the state where the crime was committed; there is no constitutional or statutory duty to seek extradition. (*Moody v. Consentino* (Colo. 1993) 843 P.2d 1355; *Aycox v. Lytle* (10th Cir. 1999) 196 F.3d 1174 [defendant cannot compel his extradition]; *Russo v. Johnson* (S.D.Tex. 2001) 129 F.Supp.2d 1012 [same].)

In addition to those factors which govern any decision to prosecute, prosecutors should also weigh the costs of extradition against such factors as:

- Whether or not a state prison sentence or felony probation is likely in the fugitive's case;

- Any uncompensated monetary loss of the fugitive's victim;

- In bad check cases, whether the amount of money involved justifies extradition;

- The fugitive's criminal record;

- In child stealing and nonsupport cases, whether civil remedies are more effective or appropriate;

- The local significance of the case;

- Whether the fugitive is already serving a substantial prison term in the asylum state.

3. ***Application for Requisition (Forms 1 - 1B)***

The essential contents of an application for requisition are as follows:

a. The name of the person charged, along with any known aliases;

b. The crime charged including, where possible, the common name for the offense, the code section violated and the permissible punishment for the offense;

c. The time, place and circumstances of the offense;

d. The state and location where the accused was found together with some showing that he is present in that state at the time of the application (e.g., a statement that a teletype has been received that the accused has been arrested);

e. The name of the agent nominated to return the accused;

f. The certification of the district attorney or other authorized applicant that the ends of justice require the arrest and rendition of the accused for trial and that the proceeding is not instituted to enforce a private claim;

g. If the application is initiated by parole or correctional authorities, or by the sheriff of a county where the fugitive escaped from a penal institution, the application must state the circumstances of his escape or the violation of the terms of his bail, probation or parole;

h. The application must be verified. Also, the application or cover letter should clearly set forth the name and telephone number of the person (officer or prosecutor) in the demanding jurisdiction who should be contacted if questions arise about the case.

The governor's office will usually provide, upon request, blank application forms similar to the ones appearing at the end of this manual. (Forms 1-1B.) Use of that form will insure that the essential contents of the application are present and will expedite the processing of each application.

4. ***Supporting Documents***

A formal requisition for extradition will not be honored by the governor of the asylum state unless it is accompanied by certain supporting documents. These documents must be attached to the application for requisition when it is submitted to the governor.

a. ***Essential documents***

1) ***Charging document***

Generally, this is the document which charges the fugitive with the commission of a crime; however, the document must be one of those specified in the extradition law and it may be necessary to execute a new charging document solely for the purpose of extradition. The documents which qualify as charging documents for purposes of extradition are set forth in 18 U.S.C. section 3182, and UCEA section 3.

a) Under the Federal Act (18 U.S.C. § 3182) extradition may be approved if the charging document is an *indictment* or an *affidavit made before a magistrate*.

NOTE: An affidavit made before a magistrate may be a complaint. However, in order for a complaint to qualify, it must be subscribed and sworn before a judge.[15/] As a general rule, the judge's signature should appear on the complaint. To comply with this requirement, it may be necessary to file an amended complaint for the purpose of extradition.

b) Section 3 of the UCEA also permits extradition based upon an indictment or affidavit before a magistrate, but it goes on to provide that an *information* and a *judgment of conviction or sentence* are also acceptable charging documents.

Information - Whenever an information is used as the charging document for purposes of extradition, it must be accompanied by an affidavit stating the facts of the offense and concluding with an accusatory allegation. A brief affidavit expressly incorporating attached police reports or other documents will suffice.[16/] However, if the reports are lengthy, the facts should simply be summarized in the affidavit to avoid submitting voluminous material. Generally, most states will accept affidavits sworn before magistrates, notaries or court clerks for this purpose. (See Forms 2 - 2A.)

Judgment/Sentence - Where possible, a copy of the actual judgment or an abstract should be used. However, a certified copy of a minute order or other record of conviction will usually

15. See *People v. Evans* (Ill. App. 1984) 467 N.E.2d 631; *Olson v. Thursten* (Me. 1978) 393 A.2d 1320, 1323, fn. 9; *Rayburn v. State* (Ala. 1978) 366 So.2d 698, 703; *Pet. of Upton* (Mass. 1982) 439 N.E.2d 1216; *Langley v. Hayward* (Ut. 1982) 656 P.2d 1020; *Ex parte McDonald* (Tex. App. 1982) 631 S.W.2d 222; *People v. Woods* (Ill. 1972) 284 N.E.2d 286.

16. *Ex parte Rodriguez* (Tex.App.1997) 943 S.W.2d 97.

be sufficient.[17/] Where the fugitive has violated probation, a probation order should be included, along with an order suspending or revoking probation, or a violation accusation, and a warrant.

NOTE: ***Sufficiency of Charge*****:** A special note regarding the language used in the charging document may avoid confusion and delay in processing extradition documents. The charging document must actually charge the person in direct and positive terms with the commission of a crime. It is not enough to simply recite facts which indicate that a crime may have been committed. Also, it is not sufficient to simply state the fugitive "has been charged" or "stands charged" because that statement is not itself a charge.

Some courts have expressed reservations about a charge based upon information and belief.[18/] However, it must be recognized that in some cases, an affiant will not be in a position to charge the defendant with a crime based upon his own personal knowledge (e.g., investigating officer, district attorney). In these cases, it is helpful if the basis of the information and belief is stated.

The standard language of a charging document usually states that the defendant was in the demanding state at the time of the alleged offense. However, where applicable, the charging document should be modified to state that the defendant did acts in another state which intentionally resulted in a crime in the demanding state.[19/] Such a person is extraditable under section 6 of the UCEA.

NOTE: ***Probable cause requirement*****:** Under *Michigan v. Doran* (1978) 439 U.S. 282, courts of the asylum state are bound to accept the judicial determination of probable cause (to believe the accused is properly charged) made in the demanding state.[20/] The extradition papers should demonstrate that, in fact, such a judicial finding has been made. All states presume such a finding when the charging document is an indictment or a

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17. See *Blackwell v. Johnson* (Colo. 1982) 647 P.2d 237 (minute order); *Miller v. Cronin* (Colo. 1979) 593 P.2d 706 (guilty plea); *Wynsma v. Leach* (Colo. 1975) 536 P.2d 817 ("record of conviction"); *State v. Luster* (Fla. 1992) 596 So.2d 454 (abstract of judgment).

18. See *Ex parte Spears* (1891) 88 Cal. 640; *Ex parte Dimmig* (1887) 74 Cal. 164. But see *People ex rel. Donohue v. Andrews* (1980) 428 N.Y.S.2d 384; *State v. Limberg* (Minn. 1966) 142 N.W.2d 563.

19. See *In re Cooper* (1960) 53 Cal.2d 772; *Ennist v. Baden* (Fla. 1946) 28 So.2d 160; *Deur v. Sheriff of Newaygo County* (Mich. 1984) 362 N.W.2d 698. Cf. *State v. Soto* (Fla. 1982) 423 So.2d 362; *In re Adams* (Ohio 1989) 579 N.E.2d 752; *Ex parte Lepf* (Tex. 1993) 848 S.W.2d 758.

20. See *Allen v. Wrightson* (D.N.J. 1992) 800 F.Supp. 1235; *People ex rel. Quarterman v. Commissioner* (1992) 583 N.Y.S.2d 297.

judgment or sentence.[21] In other cases, i.e., where an affidavit before a magistrate or complaint is utilized, the documents should somehow indicate a finding of probable cause.[22] Most states will accept such affidavits (or complaints) which are sworn before and subscribed by a magistrate as demonstrating (by the magistrate's subscription) that probable cause was found where an arrest warrant was issued on the affidavit or complaint.[23] There is wide recognition that the arrest warrant will issue only upon probable cause found by the magistrate.[24] It is suggested in such cases that a copy of the pertinent statute be included to indicate this state requirement.

While the general rule is to the contrary, a few states require that an ***express*** judicial finding of probable cause appear in the documents.[25] To meet this requirement, it is highly recommended that in all cases where an affidavit before a magistrate is relied upon as the charging document, a brief recitation be included above the magistrate's signature, or a brief supplemental affidavit, which states that probable cause has been found. This will satisfy all states' requirements.[26]

2) ***Certification – (Form 3)***

Under either the Federal Act or the UCEA, a demand for extradition cannot lawfully be honored by the governor of the asylum state unless it is accompanied by a *certified* copy of a charging document and any warrant issued thereupon. In his requisition, the demanding governor certifies as true and correct these essential supporting documents.[27] In order for the governor to so certify, the documents must be certified by local officials in a manner permitting the secretary of

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21. See, e.g., *In re Nason and Lee* (Vt. 1996) 682 A.2d 955.

22. *Harris v. State* (Ala. 1995) 669 So.2d 1033.

23. See, e.g., *Parker v. Glazner* (Colo. 1982) 645 P.2d 1319; *App. of Danko* (Kan. 1987) 731 P.2d 240.

24. *Ex parte McConnell* (Tex. App. 1987) 726 S.W.2d 632; *Semendinger v. Brittain* (Colo. 1989) 770 P.2d 1270, 1274; *State v. Steinhorst* (Wisc. App. 1995) 561 N.W.2d 234.

25. See, e.g., *Crew v. State* (Conn. 1984) 486 A.2d 664; cf. *In re Whitehouse* (Mass. App. 1984) 467 N.E.2d 228. Also see Appendix D.

26. This recitation is essential if the warrant included is a bench warrant issued by a court clerk (e.g., where the fugitive failed to appear for his preliminary examination). Such a warrant may be construed as not being based upon a judicial finding of probable cause.

27. See UCEA, § 3; *Fain v. Bourbeau* (Conn. 1985) 488 A.2d 824; *People v. Evans* (Ill. App. 1984) 467 N.E.2d 631; *Cates v. Sullivan* (Colo. 1985) 696 P.2d 322; *State v. Wallace* (Neb. 1992) 484 N.W.2d 477.

state or other appropriate officer to certify to the governor that the documents are true and correct copies.

a) ***Certification of the charging document and essential supporting documents***

Before an application for requisition will be approved, it must appear that the charging document and other essential documents (e.g., affidavit in support of information, warrant) are certified as true and correct copies of the documents on file with the court. This certification must be by the official custodian of those documents, e.g., the clerk of the court or a judge of that court. (See Form 3.)

b) ***Certification of the custodian***

In addition, the official capacity of the officer who attested to the authenticity of the charging document and other essential documents must also be certified. It is preferable if this certification is executed by an official who can, in turn be certified by the Secretary of State or other appropriate state official, so that the governor's certification is proper. Also, some governors may require "cross-certification," i.e., a judge certifies the clerk who attested that the custodian was proper, then the clerk certifies the judge. This is a matter of state law of the demanding state only; the asylum state's governor or a court there should not look behind the demanding governor's certification contained in the requisition. (See page 64-65.)

c) ***What to certify***

Ideally, all documents offered in support of the application for requisition should be certified in the above described manner. At the least, the charging document, supporting affidavit (where necessary), and the arrest warrant must be certified.

NOTE: If a complaint has been filed with the clerk of a court and a warrant has been issued pursuant to that complaint both documents should be certified. However, in addition, copies of the amended complaint or affidavit made before a magistrate, filed in aid of extradition, should also be certified.

3) ***Warrant***

Any warrant of arrest which has been issued pursuant to the filing of charges against the fugitive should be included. It is usually not necessary to have a new warrant of arrest issued pursuant to the specific document relied upon in support of extradition, e.g., where a new affidavit or an amended complaint had to be drafted for a signature before a magistrate.[28/]

However, an increasing number of states ***do*** require a warrant which was issued on the charging document relied upon for extradition purposes.[29/] Thus, whenever an amended complaint, for example, is used, a new warrant should issue, or the magistrate who signed the amended complaint can simply "reissue" the original warrant by dating and signing it anew.

4) ***Circumstance of escape, violation of probation, parole or bail***

Wherever it is appropriate, the application must be supported by a statement from a proper official that the fugitive has escaped, or that he has violated the terms of his probation, parole or bail. This statement does not replace the charging document, but only provides a basis upon which the governor can allege that the fugitive has escaped, etc. (See UCEA, § 3.) Under these circumstances, the appropriate charging document would be one showing a conviction.

a) ***When to include statement***

Most often, this type of statement must be included when the application for requisition is

28. See *Dunn v. Hindman* (D. Kan. 1993) 836 F.Supp. 750.

29. See *Ex parte Blankenship* (Tex. App. 1983) 651 S.W.2d 430. (See Appendix D.)

presented by correctional or parole authorities following an escape or abscond. It is necessary only when the crime of escape is not charged as a new offense serving as the basis for the extradition. (When escape is charged as a new offense, the charging document takes the place of this less formal statement.)

b) ***Form of statement***

It is not necessary to make this statement in a formal affidavit before a magistrate. A notarized statement is sufficient.

c) ***What to include in statement***

The statement should begin by identifying the declarant and his official capacity, e.g., records officer, jailer, etc. It should then state the basis for custody, e.g., court commitment following criminal prosecution. Finally, it should indicate the circumstances of the escape, violation of probation, parole or bail.

b. ***Additional information which should be included***

As noted earlier, the documents offered in support of extradition generally serve as the entire evidentiary basis for extradition. In addition to the essential documents mentioned above, the following information should be included whenever possible:

1) ***Code sections***

Copies of the code sections defining the offense charged and the punishment should be included.

2) ***Photographs/fingerprints of fugitive***

A threshold issue in any extradition is whether the person arrested is the same person wanted by the demanding state. The fact that the person arrested in the asylum state has the same name helps to establish identity, but it may not be enough, especially if the accused supports his

claim that he is not the person wanted.[30]

Photographs taken in the asylum state at the time of booking, accompanied by an affidavit by either the victim or some other qualified person in the demanding state, identifying the person generally create such a strong presumption of identity that the issue ceases to be a problem.[31]

NOTE: A photograph lineup or "spread" from which the accused's photo was identified should ***not*** be included. A single photograph of the accused is sufficient.

Other evidence of identity which could be utilized would include fingerprint exemplars, a written description, including identifying marks, tattoos, scars, etc., as well as Social Security, FBI or other identifying numbers.

3) ***Arrest date***

Either the cover letter or the application should state the arrest date in the asylum state. This will assist demanding state officials to determine when the formal demand is due.

c. ***Special types of cases***

1) ***Family or child abandonment or nonsupport***

Unless the defendant has already been convicted of abandonment or failure to support his family or child, an attempt to extradite such a person is governed by the UIFSA.[32] Note, however, that UIFSA merely

30. See *Wright v. Florida* (Fla. App. 1986) 497 So.2d 1313; *Kirkendoll v. Zacharias* (Minn. App. 1987) 410 N.W.2d 56.

31. Refer to Appendix D for those states which ***require*** such identifying documents as a prerequisite to approval of the extradition papers.

32. Extradition is possible only in criminal matters. While they are crimes, nonsupport and abandonment often have the appearance of being civil conflicts. This is the reason for the special extradition requirements in UIFSA. However, if the defendant has already been convicted, there is no question that the extradition is based upon a criminal proceeding and there is no need to apply the special rules of UIFSA. In such cases, extradition documents need only comply with the UCEA, e.g., include a certified copy of the judgment or sentence along with a statement that the defendant has escaped or violated the terms of his probation.

incorporates the legal requirements for extradition which are stated in the Federal Act and the UCEA.[33] Therefore, to be legally sufficient, all that is required is that the application contains a certified copy of an indictment, information with supporting affidavit, or affidavit before a magistrate charging the defendant with the commission of a crime in direct and positive terms (see pp. 14-17). UIFSA encompasses all forms of criminal nonsupport.[34]

Special requirements of UIFSA:

a) ***Not necessary to show fugitivity***

Under section 801 of the UIFSA, it is not necessary to allege that the defendant was in the demanding state at the time of the alleged crime or that he has fled from justice.[35]

b) ***Civil remedies tried or futile***

One of the purposes of UIFSA is to provide for civil remedies against a person in another state who owes an obligation of support to a person in the demanding state.

Accordingly, section 802 of that Act provides that the Governor of either the demanding state or the asylum state may require a showing that the civil remedies have been recently tried or would be futile prior to resorting to extradition. Although the words "may require" indicate that exhaustion of civil remedies is not a prerequisite to extradition,[36] as a matter of policy, most

33. UIFSA section 801 provides: "A provision for extradition of individuals not inconsistent [herewith] applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom." (See also *In re Morgan* (1966) 244 Cal.App.2d 903.)

34. See *Gallant v. State* (Me. 1976) 356 A.2d 734.

35. See *People v. Culwell* (1995) 621 N.Y.S.2d 490; *Smith v. Smith* (1955) 131 Cal.App.2d 764; *State v. Weinstein* (Mo. App. 1962) 359 S.W.2d 355. (See footnote 33.)

36. See *In re Morgan* (1966) 244 Cal.App.2d 903.

governors require such a showing before they will honor an extradition request. Also, the National Association of Extradition Officials has adopted resolutions (Nos. 3 and 19) supporting this requirement. Thus, in preparing an application for a requisition, it is necessary to include an affidavit tracing the procedural history of the particular case in support of an allegation that civil remedies have been tried at least 60 days prior to the application or that they would be futile.[37/]

c) ***Order imposing support obligation***

The courts have held that a person may not be extradited for nonsupport or abandonment unless that person is under an obligation of support.[38/] Most extraditions under UIFSA involve the failure to make alimony or child support payments as ordered by a court in a divorce or dissolution proceeding. Where this is the case, it is recommended that a certified copy of the court order be included in the extradition documents.

d) ***Statement of natural obligation of support***

Where the person sought to be extradited is charged with abandonment, it must appear that the defendant is a natural parent or other person

37. In the case of *Puerto Rico v. Branstad* (1987) 483 U.S. 219, 107 S.Ct. 2802, the United States Supreme Court ruled that extradition is a mandatory constitutional duty enforceable by federal mandate where the constitutional requisites have been satisfied. In other words, governors no longer have "discretion" to deny such extradition requests. (Cf. *Kentucky v. Dennison* (1861) 65 U.S. 66.) Therefore, despite the permissive language of UIFSA (the Governor "may" demand or surrender one accused of nonsupport), where fugitivity is present (see pp. 62-63), it is now doubtful a governor can condition the surrender of a criminally accused person upon exhaustion of UIFSA's civil remedies. However, as with other types of offenses, where there is no fugitivity (i.e., where the criminal acts were committed outside the demanding state), extradition is not constitutionally mandated and governors have discretion. (UIFSA, § 801; UCEA, §6.) Nevertheless, this question is not settled and applications should still include a showing that civil remedies have been attempted or would be futile.

38. *Clarke v. Blackburn* (Fla. App. 1963) 151 So.2d 325. But see *California v. Superior Court (Smolin)* (1987) 482 U.S. 400.

obligated to support the complainant by operation of law. This allegation may appear in the document charging the defendant with abandonment, but if it does not, it should be included in the affidavit noted in paragraph b).

e) ***Conflicting support orders***

Section 802 of UIFSA provides that the Governor of the asylum state may refuse extradition if the obligee has obtained a court order of support and the defendant is presently complying with that order.[39/] In addition, if the defendant has obtained an order from a court relieving him of his support obligation, the Governor may, and usually will, decline extradition.[40/] (But see footnote 37.)

NOTE: Additional reference materials regarding UIFSA and URESA include:

(1) Original version of UIFSA with annotations may be found in Volume 9, Part I, Uniform Laws Annotated.

(2) Original version of URESA with annotations may be found in Volume 9C, Uniform Laws Annotated, pages 273-310.

(3) Cases may also be found in the annotated publications of each state's enactment of UIFSA or URESA, and in any of the West's Digests under the heading "Extradition," key numbers 21, 27, 29, 32, et seq.

(4) Related cases may be found under the following headings in the West's publications: "Divorce," numbers 37 (10) (14), 300, and 311; "Husband &

39. See *In re Pace* (Ga. 1982) 297 S.E.2d 255.

40. See *Ex parte Smith* (Tex. App. 1965) 391 S.W.2d 433.

Wife," numbers 303-310 and "Parent & Child," number 17.

(5) See also, 42 A.L.R.2d 768.

2) ***Prisoners***

Where the fugitive is presently incarcerated following a conviction in the asylum state, the most common means of returning him for trial is through the Interstate Agreement on Detainers (IAD). (Chapter III of this manual discusses the IAD in detail.) However, in certain cases, notably where the fugitive is likely to receive the death penalty, or is wanted for a parole or probation violation, it is desirable to use an alternative, namely, extradition with an executive agreement. Also, Louisiana and Mississippi have not adopted the IAD and an executive agreement is necessary to obtain custody of a fugitive incarcerated in those states.

a) ***Executive agreement (Form 4)***

This document must be prepared by the agency requesting a requisition (e.g., prosecuting attorney), and forwarded along with the application for requisition. If the fugitive is a prisoner in a county jail or other local facility in the asylum state, an executive agreement is often ***not*** necessary unless specifically requested by the asylum state, since the asylum state's interest in the fugitive may be insufficient to warrant his return for completion of the asylum state sentence.

It has been held that a prisoner has no standing to contest an agreement between two sovereigns concerning the exchange of custody of the prisoner.[41/] Thus, where the prisoner has prison commitments in multiple states, the states may

41. *Smothers v. State* (Miss. 1999) 741 So.2d 205; *Pitsonbarger v. Gramley* (7th Cir. 1998) 141 F.3d 728; *New York v. Poe* (E.D. Okla. 1993) 835 F.Supp. 585; *Grayson v. Wainwright* (Fla. 1976) 330 So.2d 461, 463; *Chunn v. Clark* (5th Cir. 1971) 451 F.2d 1005, 1006; *Dorrough v. Texas* (5th Cir. 1971) 440 F.2d 1063.

agree where he should be in custody.[42] The sending state does not waive jurisdiction in this situation.[43]

b) ***Return after trial***

The crucial promise in an executive agreement is that the fugitive will be returned to the asylum state upon demand, immediately after trial is completed in the demanding state. (UCEA, § 5.) Trial is considered completed when the defendant is sentenced, not when the appellate process is completed. After sentencing, the district attorney or law enforcement agency in the demanding state should contact the prison in the asylum state to make arrangements for the return of the prisoner. Although the terms of the executive agreement seem to require a demand for the prisoner's return, that demand may be very informal. In fact, this requirement may essentially be disregarded unless the asylum state affirmatively states that it does not wish to have the fugitive returned. Once arrangements have been made to return the prisoner to the asylum state prison, the return is summary in nature. There is no requirement of a court appearance.[44]

c) ***Flexibility of executive agreement***

Although executive agreements usually provide for the fugitive's return, they are flexible instruments that can be tailored to fit the particular requirements of the demanding and asylum states in those exceptional cases not covered by statute and in which the fugitive's

42. *Poland v. Stewart* (9th Cir. 1996) 92 F.3d 881, 886; *Pitsonbarger v. Gramley* (7th Cir. 1998) 141 F.3d 728; *State v. Robbins* (N.J. 1991) 590 A.2d 1133, 1136.

43. *Engberg v. State* (Wyo. 1994) 874 P.2d 890.

44. See *Boag v. Boies* (9th Cir. 1972) 455 F.2d 467; *Hinkle v. Rockefeller* (Ark. 1970) 458 S.W.2d 371; *Good v. Allain* (S.D. Miss. 1986) 646 F.Supp. 1029.

return is not the exclusive concern (e.g., fugitive is sentenced to death in demanding state or in both states).[45] Whenever a prosecutor is confronted with such a rare situation, he should consult the asylum state and his attorney general's office about drafting an appropriate agreement.

NOTE: Extradition does not apply between a state and the federal government. Thus, for example, a federal prisoner, upon completion of his sentence, may be surrendered directly to a state which has charges pending against him. No extradition, executive agreement or other formality is required.[46]

3) ***Military***

Extradition of members of the United States military is governed by 10 United States Code section 814. That section provides as follows:

> "(a) Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.
>
> "(b) When delivery under this Article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence."[47]

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45. See, e.g., *Pitsonbarger v. Gramley* (7th Cir. 1998) 141 F.3d 728.

46. See *Davis v. Rhyne* (Kan. 1957) 312 P.2d 626.

47. Generally, state courts have concurrent jurisdiction with military courts. (*Matter of Demjanjuk* (N.D. Ohio 1985) 603 F.Supp. 1468; *United States v. Matthews* (E.D. Ala. 1943) 49 F.Supp. 203, 205; *People v. Denman* (1918) 179 Cal. 497; *In re Koesdeo* (1922) 56 Cal.App. 621.) Civilian courts may try service personnel if the civilian court has taken jurisdiction first or if the military consents. (*Matter of Demjanjuk*, *supra*.)

The rules promulgated by the various service branches are located at 32 Code of Federal Regulations, section 503.2 (Army); 32 Code of Federal Regulations, section 720 (Navy); and 32 Code of Federal Regulations, section 884 (Air Force).[48/] Essentially, all the branches require requesting states to follow normal extradition procedures.[49/] Therefore, servicemen may also waive extradition. Procedures do vary depending on whether the fugitive is assigned to a base or ship within or without the jurisdiction of the United States. Although the military procedures described below should be generally followed, the actual regulations for the service in which the fugitive is serving should always be consulted.

a) ***Base or ship located in another state***

(1) Prepare extradition documents in the same manner as any other extradition, except state that the fugitive is on the particular base. In addition, an executive agreement for the governor's signature should be prepared in which the demanding state agrees to return the fugitive to the military after disposition of his case or satisfaction of sentence. The complete text for such an agreement is contained in the appropriate service regulations.[50/] All costs are borne by the requesting state. It should also be noted that the service will generally honor fugitive arrests pending arrival of a governor's warrant unless a disciplinary proceeding is pending or there are other exigencies which deter the arrest. The warrant should be taken by the local

48. The Coast Guard's procedures are published as part of an internal procedural manual. Those procedures are available from the Coast Guard legal offices on request.

49. See *Street v. Cherba* (4th Cir. 1981) 662 F.2d 1037, 1040.

50. See Form 5. Note that the Army actually requires a "receipt" rather than a delivery agreement. This receipt is to be executed by the official receiving custody of the fugitive.

sheriff to the commanding officer. Obviously, a serviceman may choose to waive extradition at this point.

(2) Requisition should be sent to governor of state or territory in which base is located.

(3) Rendition warrant should be sent to sheriff in county where base is located.

(4) Sheriff should present warrant to commanding officer of base, who is authorized to turn the serviceman over to the sheriff.

(5) The permissive language of 10 United States Code section 814 indicates that "delivery" may be withheld where military necessity dictates against it. In exercising his discretion to grant or deny the request, the military authority will consider: the seriousness of the offense charged; whether court-martial charges are pending against the alleged offender; whether he is serving a sentence imposed by court-martial; and whether the best interests of the armed services will be served by his retention.[51/] Please note it is the general policy of all four service branches to comply with requests for extradition. On those occasions when a refusal does occur, it is reviewed by the appropriate Judge Advocate General.

(6) If delivery is approved, the local sheriff then arranges to have the fugitive arraigned in local court pursuant to extradition law.

51. *Plaster v. United States* (4th Cir. 1986) 789 F.2d 289.

b) ***Fugitive stationed within the requesting state***

Extradition is not required since only one state is involved.

(1) The Navy requires a warrant. The Air Force requires a copy of the indictment, information, "or other document which may be used in the particular jurisdiction to prefer formal charges of the commission of a criminal offense." The Army requires a copy of an indictment, presentment, information, or warrant, together with sufficient information to identify the person sought as the person who allegedly committed the offense charged and a statement of the maximum sentence which may be imposed upon conviction.

(2) The general purpose of these requirements is to assure the service involved that the person delivered is indeed the correct person, that formal proceedings have in fact been commenced in the demanding jurisdiction to try the subject for commission of a crime, and that reasonable cause exists to believe that the person whose delivery is sought did indeed commit the crime with which he is charged. Consequently, the Army states that where the document submitted with the request is simply a warrant, the commander may cause an inquiry to be made to satisfy himself that reasonable cause exists for the issuance of the warrant. If the warrant is accompanied by the written statement of a prosecutor that a preliminary official investigation shows that reasonable cause exists to believe that the subject committed the offense, no further investigation by the

commander is required. And, if the request is accompanied by an indictment, presentment or information, reasonable cause is presumed to exist.

c) ***Fugitive assigned to a base or ship, etc., outside the territorial jurisdiction of a state or territory of the United States***

(1) Prepare extradition documents in the same manner as other extraditions, except the requisition must be submitted to the Secretary or Judge Advocate General of the service branch. If delivery is approved, the fugitive will be returned through a normal port of entry into the continental United States.

(2) The fugitive will then need to be extradited from that port of entry to the demanding state. Therefore, a demanding state should ascertain in advance where the fugitive will enter, contact the appropriate authorities in that state in order to take the fugitive into custody, and prepare the necessary extradition papers.

d) ***Fugitive arrest***

The Judge Advocate General has indicated that a fugitive arrest pending arrival of a governor's warrant will generally be honored unless the serviceperson is being held pending disciplinary proceedings or unless there are other exigencies of the service branch which deter the arrest. Proceedings to obtain the fugitive warrant are identical to those described at pages 40-46. The warrant should be taken by the local sheriff to the commanding officer of the base.

4) ***District of Columbia***

Where the fugitive is found in the District of Columbia, the application should request that the requisition be forwarded to the Chief Judge of the Superior Court for the District of Columbia. Otherwise, the extradition requirements are essentially the same as for another state. However, by local statute, fugitives held by the District of Columbia must be picked up by the demanding state's agents within 72 hours of the Chief Judge's rendition order. (Contact: Metropolitan Police Department, Fugitive Squad, (202) 727-4279.)

5) ***Civil commitment escapees/outpatient absconders***

Extradition is possible only in criminal matters and may not be used to enforce a civil judgment.[52/] When a person has been involuntarily committed to a civil treatment program, the criminal proceedings are often suspended pending completion of that program. Thus, if the person escapes or if he absconds while on outpatient status, there is technically no criminal charge pending. In order to return such a person through the extradition process, it is necessary to obtain a court order reinstating the criminal proceedings. A certified copy of that order, together with certified copies of the indictment/ information/complaint/judgment or other necessary affidavit must accompany the application for requisition. If a warrant is issued pursuant to reinstatement of the criminal proceeding, a certified copy of that warrant must also be included.

In some states escape from a mental hospital following an involuntary commitment is a crime. Likewise, it is a crime in some states to abscond from outpatient status following such a commitment. In either case, where the appropriate crime is charged, the person is subject to extradition. The application should contain certified

52. Article IV, Section 2, Clause 2, of the United States Constitution applies to persons "charged in any State with treason, felony, or other crime." With regard to the nature of the extradition law, see *Appleyard v. Massachusetts* (1906) 203 U.S. 222, 227.

copies of the original commitment order, the indictment/information/complaint/judgment or other affidavit before a magistrate charging escape or absconding, and the arrest warrant.

Where state law permits, another alternative where a civil commitment was ordered and later violated may be to file a charge of criminal contempt for violation of the court order and then seek extradition for the crime of contempt.[53/]

6) ***Parole or probation violators***

Where a parolee or probationer has signed a waiver of extradition as a condition of his parole or probation, it ***may*** be possible to enforce that condition in the asylum state.[54/] When the parolee or probationer is arrested in the asylum state, and when officials in the demanding state are notified of the arrest, the asylum state prosecutor should be told of the waiver and he should be asked whether the waiver is enforceable in his state. If it is, a certified copy of the signed conditions of parole or probation, including the waiver of extradition, should be immediately sent to the prosecutor or law enforcement agency having custody of the fugitive, along with a copy of the order revoking or suspending parole or probation, and the arrest warrant. The asylum state officials should be asked to present the waiver to the court in that state at the time of arraignment on the fugitive warrant, or as soon thereafter as possible. In addition, those officials should be asked to notify the prosecutor or law

53. A claim that the underlying action is a civil matter should be raised in the demanding state, not the asylum state courts. (*In re Blackburn* (Mont. 1985) 701 P.2d 715.)

54. Several jurisdictions have held that since parole is a matter of legislative grace, a parolee is bound by its terms and conditions, including a prior waiver of extradition. *Brown v. Daggett* (8th Cir. 1972) 458 F.2d 14; *Cook v. Kern* (5th Cir. 1964) 330 F.2d 1003; *United States ex rel. Simmons v. Lohman* (7th Cir. 1955) 228 F.2d 824; *Woods v. Steiner* (D. Md. 1962) 207 F.Supp. 945; *White v. Hall* (Md. App. 1972) 291 A.2d 694; *Ex parte Williams* (Texas 1971) 472 S.W.2d 779; *State* v. *Maglio* (N.J. 1983) 459 A.2d 1209; *State ex rel. Morris v. Tahash* (Minn. 1962) 115 N.W.2d 676; *Madden v. Simmons* (Ala. 1957) 92 So.2d 922; *Pierce v. Smith* (Wash. 1948) 195 P.2d 112, cert. den. 335 U.S. 834; *People v. Corder* (1986) 503 N.Y.S.2d 955. Many states recognize and honor "presigned" waivers of extradition. Several states have enacted statutes providing that such waivers are enforceable. (See Appendix G.)

enforcement agency in the demanding state as soon as the asylum state court determines whether to enforce the waiver. If the waiver will not be enforced, the preparation of extradition documents should begin immediately.

If extradition is necessary, the appropriate documents would include a record of the conviction (judgment, probation order, etc.), plus a statement about the violation of probation or parole. (See pp. 15, 19-20.)

***CROSS REFERENCE*:** Where a probationer or parolee has been allowed to reside in another state under an interstate compact and his return is desired, or when he absconds from that state and is found in a third state, formal extradition is not required. (See Uniform Act for Out-of-State Probationer or Parolee Supervision and Interstate Compact for Adult Offender Supervision, discussed at pp. 97-99.)

7) ***Juveniles***

Where a juvenile has been charged with a crime in the demanding state or where a petition for delinquency has been filed, the juvenile ***may*** be returned under formal extradition proceedings.[55/]

a) ***Formal Extradition***

Some state legislatures have declared that a juvenile charged with a violation of law may be returned to the state in the same manner as any other person charged with a crime there. Unfortunately, such provisions have not been adopted by all states. Therefore, it is advisable to request the advice of the prosecutor in the asylum state whether, under the law of that state, the juvenile may be returned through the extradition process. If he can be, the

55. The extradition law does not distinguish between juveniles and adults. The question of whether a juvenile is subject to extradition arises when it is alleged that he is not subject to the criminal law and therefore is not substantially charged with a crime which, as noted earlier, is a prerequisite to extradition.

application for requisition is prepared in the same manner as described at pages 13-21.

NOTE: ***Affidavit before magistrate:*** Usually, the petition for delinquency under a state's juvenile court law will not be subscribed and sworn before a magistrate, so it will be necessary to file an "affidavit in aid of extradition" relating the facts of the offense and concluding with a criminal charge. The affidavit should be certified in the manner described at pages 18-20, since it will serve as the charging document for purposes of extradition. Include a copy of the appropriate statute mentioned above, if applicable, among the documents supporting the application for requisition.

b) ***Interstate Juvenile Compact*** (discussed at pp. 99-103.)

Extradition may not be necessary to accomplish the return of a juvenile. The Interstate Compact on Juveniles provides a procedure for the return of runaways, escapees, and juveniles charged as delinquent for violation of a criminal law. The compact also provides for out-of-state supervision of delinquent juvenile probationers and parolees.

8) ***International Extradition***

International extradition is governed by individual treaties and the documentary requirements as well as the types of offenses which are extraditable vary. Appendix F contains information on international extradition provided by the Office of International Affairs, U.S. Department of Justice in Washington D.C. Usually the state attorney general's office should be contacted prior to commencing an international case.

9) ***Indian Reservations***

a) ***Extradition From Indian Reservations***

Except in certain states designated by Congress,[56/] procedures for extradition either

56. Under 18 U.S.C. § 1162(a), the states of Alaska (with one exception), California, Minnesota (with one exception), Nebraska, Oregon (with one exception), and Wisconsin have jurisdiction over individuals on reservations in criminal justice matters. Extradition should go through state officials as in other cases when these states are involved.

from or to an Indian reservation will usually depend on whether the particular tribe has an established judicial system and has enacted provisions governing the rendition of accused persons. Where no such law exists, a state seeking rendition of an accused from a reservation should follow normal extradition procedures, i.e., the prosecutor sends an application and supporting documents to the governor, who attaches them to his requisition and forwards the package to the asylum state's governor. Once the governor's rendition warrant is issued, it would normally be forwarded to the sheriff in whose county the reservation is located. Although protocol dictates coordination with tribal authorities, the sheriff would have authority to execute the warrant.[57/]

On the other hand, where the tribe has enacted laws governing rendition matters, the demanding state's governor may apply for rendition directly to the tribal authorities, usually the tribal council or the tribal court. In such cases, the decision to extradite is solely up to the tribal authorities and state officials may not enter the reservation to arrest the accused.[58/] Thus, in cases where there is an established judicial system and appropriate enactments, a demanding state should treat the tribe similarly to any asylum state. If the requisition nevertheless is sent to the governor's office in such cases, it should be forwarded to tribal authorities.

b) ***Extradition To Indian Reservations***

Obviously, when a governor receives a requisition from a demanding state's governor

57. *State ex rel. Old Elk v. District Court in and for Big Horn* (Mont. 1976) 552 P.2d 1394.

58. *State of Arizona ex rel. Merrill v. Turtle* (9th Cir. 1969) 413 F.2d 683; *State v. Horseman* (Mont. 1993) 866 P.2d 1110.

upon the application of tribal authorities within the demanding state, the asylum state governor treats the requisition as he would any other. However, based on the notions of tribal sovereignty discussed above, tribes with laws permitting such may apply directly to the governors of asylum states for the rendition of individuals charged with crimes committed on the reservation. Asylum state governors may deal directly with tribal authorities in these cases.[59/] Thus, after having satisfied himself or herself as to the authenticity of the requisition and supporting papers, and of the tribal authority for making the request, the asylum state governor may issue a warrant for the arrest and rendition of the accused. All other asylum state proceedings would be as in any other case. When the accused is ready for delivery, tribal authorities in the demanding state should be notified.

The Bureau of Indian Affairs publishes in the Federal Register a list of the Indian entities it officially recognizes. This listing can assist in determining the authenticity of extradition requests. The governor's office should contact the demanding tribal authorities to determine their legal authority to seek extradition. The Bureau of Indian Affairs also publishes a directory of tribal leaders of all the recognized Indian entities. These publications are regularly updated, so the Area Office should be contacted for the most current information.

5. ***Time for Processing Papers***

As indicated at pages 49-53, a fugitive warrant/complaint pending arrival of a governor's warrant will provide judicial restraint of the fugitive for only 30 days, with extensions up to an additional 60 days

59. Some states, such as Montana (M.C.A. § 46-30-101 (1993)) and South Dakota (S.D.C.L. § 23-24B), have specifically enacted statutory provision dealing with extradition between the state and Indian tribes. These essentially are patterned after the Uniform Criminal Extradition Act.

possible.[60] Generally, if all the papers are in order, it takes approximately two to three weeks to complete the processing of extradition papers so that a governor's warrant can be served upon the fugitive. Occasionally, this process may be delayed because of the absence of one or both governors or for other reasons.

NOTE: Two things can be done to guard against delays which could result in loss of the fugitive: (1) in the application form and in the cover letter accompanying the application, ***indicate the date the fugitive was arrested*** and the date his release is expected if not arrested on a governor's warrant, or include a copy of the teletype from the asylum state; (2) if the requesting agency is notified that the release date is close at hand, the agency should telephone either the Attorney General or the Governor for assistance in speeding up the issuance of the warrant.

6. ***Return of the Fugitive***

a. ***Taking custody***

Agents from the demanding jurisdiction should arrange to take custody of the fugitive in the asylum state at the earliest possible time following notification that the fugitive is ready to be surrendered. While the Federal Act appears to require that fugitives be kept in custody at least 30 days after service of the governor's warrant, local judges frequently require that the agents appear in a much shorter time.[61] The agents should be prepared to present their identification and authority (governor's commission) to receive custody of the fugitive when they arrive in the asylum state. Some states require that a female agent take custody of a female fugitive. (See Appendix D.) It is usually not necessary that the transfer of custody take place in court or before a judge.

b. ***Extradition expenses***

Under section 24 of the UCEA, the state may reimburse local jurisdictions for the reasonable expenses incurred by agents in returning fugitives to the demanding state if the punishment for the crime is imprisonment in the state prison. These expenses

60. See Appendix H for a list of the maximum periods that particular states generally will hold fugitives awaiting issuance of a governor's warrant.

61. *Long v. Cauthron* (Ark. App. 1987) 731 S.W.2d 792; see also *People v. Superior Court (Lopez)* (1982) 130 Cal.App.3d 776, 786. See National Association of Extradition Officials Resolution No. 43.

include transportation, lodging, meals and related incidental expenses necessarily incurred. However, most states have either deleted or modified this section of the UCEA. Some states authorize judges to order reimbursement of extradition expenses as part of the defendant's sentence.[62] Agents and prosecutors should consult their state's own law regarding reimbursements. Questions regarding state reimbursement of extradition expenses should be directed to the governor's extradition secretary or the attorney general's office.[63]

c. ***Challenge to extradition after return***

Occasionally a criminal defendant who has been returned for trial will argue that his return was unlawful, e.g., that the extradition was unlawful or that he was kidnapped.[64] This is no defense to prosecution in the demanding state. The courts have squarely held that, insofar as jurisdiction to prosecute the defendant is concerned, the method by which he was brought into the state, even if unlawful, is irrelevant.[65]

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62. *State v. Smith* (Neb. 2005) 695 N.W.2d 440*; State v. Robertson* (Ut. 1997) 932 P.2d 1219; *State v. Wildman* (N.J. Super. 1997) 687 A.2d 340; *State v. Slocum* (Mich. App. 1995) 539 N.W.2d 572; *State v. Olson-Lame* (S.D. 2001) 624 N.W.2d 833; *Vestal v. State* (Ind. App. 2001) 745 N.E.2d 249.

63. The general practice among jurisdictions throughout the country is that the arresting/detaining jurisdiction within the asylum state bears the costs of feeding, housing and transporting the fugitive pending his or her rendition to the demanding state's agents. Technically, until turned over to agents of the demanding state, fugitives are in custody pursuant to the law of the asylum state, not under authority of the demanding state. Thus, the asylum jurisdiction has the obligation to care for the fugitive. (See *St. Charles County v. Wisconsin* (2006) 447 F.3d 1055; *Colfax County v. New Hampshire* (10th Cir. 1994) 16 F.3d 1107; National Association of Extradition Officials Resolution No. 31 (1986).) However, where ***extraordinary*** costs are incurred in connection with holding a fugitive for the demanding state, such as major medical expenses for a fugitive who is ill or injured, the policy is less clear. The Federal Act provides that "[a]ll costs or expenses incurred in any extradition proceeding in apprehending, securing, and transmitting a fugitive shall be paid by the demanding authority." (18 U.S.C. § 3195.) This section has been held to create a federal civil cause of action against a demanding state for medical and related expenses incurred by an asylum state's county where the fugitive required hospitalization and surgery. (*County of Monroe v. Florida* (2d Cir. 1982) 678 F.2d 1124; *Lapeer Co., Michigan v. Montgomery Co., Ohio* (6th Cir. 1997) 108 F.3d 74.)

64. A challenge to extradition must be made *before* the transfer. (*Weilburg v. Shapiro* (C.A. 2007) 488 F.3d 1202*; State v. Gilbert* (Mo. 2003) 103 S.W. 3d 743*; State v. Taylor* (N.C. 2001) 550 S.E.2d 141; *State v. Snow* (R.I. 1996) 670 A.2d 239.)

65. *United States v. Alvarez-Machain* (1992) 504 U.S. 655, 119 L.Ed.2d 441; *Scrivner v. Tansy* (10th Cir. 1995) 68 F.3d 1234, 1241; *Brown v. Nutsch* (8th Cir. 1980) 619 F.2d 758, 762; *Gee v. Kansas* (10th Cir. 1990) 912 F.2d 414; *Frisbie v. Collins* (1952) 342 U.S. 519, 522; *Ker v. Illinois* (1886) 119 U.S. 436; *People v. Bradford* (1969) 70 Cal.2d 333, 344; *People v. Garner* (1961) 57 Cal.2d 135; *State v. Nysus* (N.M. App. 2001) 25 P.3d 270; *State v. Speller* (N.C. 1997) 481 S.E.2d 284; *Gallimore v. State* (Mo. App. 1996) 924 S.W.2d 319;

d. ***Credit for time in custody fighting extradition***

A defendant who has been in custody in another jurisdiction because of an untried charge in the demanding state, when finally tried and sentenced there, may be entitled to credit for the time served in the asylum state, even if he was resisting extradition during that time.[66] However, if he was ***first*** arrested on a local charge, no credit should be given for time spent in custody on that charge.[67] Also, if he was arrested and resisted extradition for a parole violation or is an escapee being returned to complete an unsatisfied judgment, no credit is awarded for time resisting extradition.[68]

e. ***Right to speedy trial***

A defendant who was returned for trial from another state may not claim a violation of his speedy trial rights due to delay caused by his absence.[69]

F. PROCEDURES IN THE ASYLUM STATE

1. *Introduction*

This section deals with the law, procedures and suggestions pertaining to matters which occur in the asylum state when a fugitive is found there. Included in the discussion are the fugitive's arrest, the arraignment on the fugitive warrant, waivers of extradition, commitment while awaiting the governor's warrant, bail, issuance and service of the governor's warrant, arraignment on that warrant,

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State v. Snow (R.I. 1996) 670 A.2d 239; *State v. Gumm* (Ohio 1995) 653 N.E.2d 253; *Walker v. McCormick* (Mont. 1993) 858 P.2d 373. But cf. *Day v. State* (Tex. App. 1988) 758 S.W.2d 869; *People v. Hoekstra* (Ill. 2007) 863 N.E.2d 847.

66. *People v. Finley* (Colo. App. 2006) 141 P.3d 911; *In re Watson* (1977) 19 Cal.3d 646; *People v. Havey* (Mich. 1968) 160 N.W.2d 629; *People v. Nagler* (1964) 251 N.Y.S.2d 107; *State v. Mason* (Haw. 1995) 900 P.2d 172.

67. *In re Joyner* (1989) 48 Cal.3d 487; *People v. Joyner* (1984) 161 Cal.App.3d 364; *Zygadlo v. State* (Fla. App. 1996) 676 So.2d 1015.

68. *In re Pearce* (1974) 40 Cal.App.3d 399, 402; *People v. Underwood* (1984) 162 Cal.App.3d 420, 424. Cf. *Comm. v. Beauchamp* (Mass. 1992) 595 N.E.2d 307.

69. *State v. Stewart* (Wash. 1996) 922 P.2d 1356; *Cooper v. State* (Ga. 1997) 481 S.E.2d 607; *State v. Gathercole* (Iowa 1996) 553 N.W.2d 569. Cf. *Smith v. Hooey* (1969) 393 U.S. 374.

bail on the governor's warrant, habeas corpus, and the actual rendition.

2. ***Fugitive Arrest***

One of the deficiencies of the Federal Act is that it does not provide for the immediate arrest and detention of an individual in order to allow time for the issuance of a formal governor's warrant of rendition. Pursuant to the authority of the states to enact legislation in aid of extradition,[70/] most states have adopted sections 13-18 of the UCEA. These sections provide a way to invoke the jurisdiction of the court in the asylum state in order to detain a fugitive long enough for the respective governors to process the necessary paperwork for a governor's warrant. There are actually several options when a fugitive is located, including continued surveillance, immediate warrantless arrest, or filing a fugitive complaint and making an arrest pursuant to the fugitive warrant.

a. ***Surveillance***

As noted at page 55, it is not legally necessary for a fugitive to be under arrest at the time he is taken into custody on the governor's warrant. A governor's warrant is an original warrant of arrest and may be the sole basis for custody. Thus, one option which is available when a fugitive is located is to simply maintain surveillance over the fugitive until such time as the governor's warrant is issued and can be served upon the fugitive.

NOTE: Notwithstanding the above, most governors do not like to issue rendition warrants unless the fugitive is already in custody. This does not mean that they will refuse to do so in any given case.

b. ***Immediate arrest***

The UCEA, section 14, authorizes any peace officer to immediately arrest and detain any person whom the officer reasonably believes is charged in the courts of another state,

70. *South Dakota v. Brown* (1987) 20 Cal.3d 765; *Smith v. Idaho* (9th Cir. 1967) 373 F.2d 149; *Walden v. Mosley* (D.C. Miss. 1970) 312 F.Supp. 855; *In re Tenner* (1942) 20 Cal.2d 670, cert. den. 314 U.S. 597; *In re Morgan* (1966) 244 Cal.App.2d 903. See also *Burton v. N.Y. Central R.R.* (1917) 245 U.S. 315.

provided the crime charged is punishable by death or imprisonment for more than one year in the demanding state.[71]

NOTE: This arrest is "warrantless" because there is no ***local*** (asylum state) warrant for the fugitive. The demanding state's warrant is not being served.[72] Thus, the arresting agency should not release the fugitive if he offers to post the bail specified in the demanding state's warrant. Likewise, that bail amount is not binding on the magistrate in the asylum state who later releases the fugitive after he is arraigned. Indeed, an arrest under section 14 may be made even if no warrant was issued in the demanding state.[73]

Following is an overview of the proceedings from the arresting agency's point of view when there is a warrantless arrest:

1) An officer has "reasonable cause" to arrest a fugitive when he obtains information through official police channels that there are charges or an unsatisfied conviction pending against the fugitive or a warrant has been issued in the demanding state.[74] This information is often obtained through NCIC. However, it may be necessary to produce certified copies of the out-of-state charges and warrant as support for the arrest.[75] These documents are produced at the arraignment as support for the fugitive complaint.

2) Contact should be made with the demanding state prosecutor or law enforcement agency to ascertain whether that state wishes to have the person detained so they can undertake extradition or whether the person waived extradition in the demanding state as a condition

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71. See *Ex parte Hardy* (Ala. 2000) 804 So.2d 298; *People v. Motter* (1997) 653 N.Y.S.2d 378 [knowledge of out-of-state warrant provided officers with reasonable cause to make fugitive arrest].

72. See *State v. Lyrek* (Iowa 1986) 385 N.W.2d 248; *Street v. Cherba* (4th Cir. 1981) 662 F.2d 1037.

73. See *State v. Klein* (Wisc. 1964) 130 N.W.2d 816.

74. In *United States v. Hensley* (1985) 469 U.S. 221 [83 L.Ed.2d 604], the Supreme Court held that officers could detain for investigation a person on reasonable suspicion, short of probable cause to arrest, that the person was involved or wanted in connection with a completed felony committed in another state. See also *People v. Motter* (1997) 653 N.Y.S.2d 378.

75. See *People v. Waters* (1973) 30 Cal.App.3d 354; *People v. Velasquez* (1970) 3 Cal.App.3d 776; *People v. Honore* (1969) 2 Cal.App.3d 295; *People v. Schellin* (1964) 227 Cal.App.2d 245.

of bail, probation or parole. If there was a presigned waiver enforceable in the asylum state, request that the demanding state officials send the materials required to effectuate the waiver. (See pp. 47-48.)

3) If there was no prior waiver, ascertain whether the fugitive will waive extradition before an asylum state magistrate.

4) If he waives, notify the district attorney and request that he prepare a waiver form and set a court date for arraignment and execution of the waiver. (See Form 6.)

5) If no waiver is anticipated, immediately request that certified copies of the demanding state's indictment/ information/complaint/judgment and warrant be sent by the prosecutor or law enforcement agency in the demanding state. Also, any identification documents which are available in the demanding state should be requested.

6) The local prosecuting attorney should prepare a fugitive complaint (see Form 7) and obtain a court date for arraignment and filing of the complaint.

7) Send booking photographs and fingerprints to the prosecutor or law enforcement agency in the demanding state and request that the fugitive be identified as the same person wanted in that state. It is advisable to request that the demanding state prosecutor also include these identified photographs in his set of extradition papers. (See p. 20.)

8) File a fugitive complaint and arraign the fugitive essentially as described in Appendix I.

9) A commitment order ("warrant") should be issued by the court or the matter should be continued for an identity hearing ***if the fugitive denies he is the person charged***.

10) If the fugitive has agreed to waive extradition, the waiver form should be executed before the court at the

time of arraignment. One copy of the waiver must be filed with the asylum state governor. (UCEA, § 25-A.) It is suggested that one copy be filed with the court, and that two copies be available to the agent of the demanding state.[76] If a formal waiver is executed, there is no need for an identity hearing, and the court may order the fugitive delivered forthwith to agents of the demanding state.

11) If there has been no waiver, an identity hearing (pages 48-49) may be held within a reasonable time ***if the fugitive denies being the person charged***.

12) Assuming all proceedings are in order (e.g., arrest was proper and person arrested is the same person sought by the demanding state), the fugitive must be kept in custody for 30-90 days to allow time for formal extradition. (UCEA, § 15, 17.) "Custody" means actual or constructive, since the fugitive may be eligible for bail pending receipt of a governor's warrant (see pp. 51-52). (UCEA, § 16.)

c. ***Fugitive complaint/warrant***

As noted above, a person may be arrested without a warrant only if he is charged with an offense punishable by death, or imprisonment for over one year. In all other cases, it is necessary to obtain a local warrant (fugitive warrant) for the person's arrest.[77] In addition, where the offense in the demanding state is not extremely serious and where the fugitive is not likely to flee, it may be desirable to obtain a fugitive warrant before making the arrest.[78] The following procedure is recommended:

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76. Most states provide for state reimbursement of the costs of extradition. Providing the demanding state agent with two copies of the waiver will allow that agent to submit one form to the appropriate officials of his state with his reimbursement claim and still retain one copy as evidence that the fugitive was lawfully returned.

77. UCEA, § 13. However, while it is a violation of this section to make a "warrantless" fugitive arrest for a misdemeanor, such an arrest does not violate the Fourth Amendment if supported by probable cause. (*United States v. Frank* (S.D.N.Y. 1998) 8 F.Supp.2d 284.)

78. From a legal standpoint, an arrest pursuant to a warrant is preferable to an arrest made without a warrant.

1) As soon as a fugitive is located, contact should be made with the prosecutor or law enforcement agency of the state having the outstanding charges against the fugitive in order to determine whether that jurisdiction wishes to have the fugitive taken into custody so that extradition proceedings may begin. It should also be determined if the fugitive waived extradition in the demanding state as a condition of bail, probation or parole. If so, the appropriate documents should be requested (see pp. 47-48). If extradition is required, the arresting agency should request that certified copies of the indictment/information/complaint/judgment and warrant be forwarded immediately. In addition, any materials or statements which might help to establish the identity of the fugitive should be transmitted.

2) When the documents are received from the demanding state, the district attorney should prepare and file a fugitive complaint (Form 7) in the appropriate court. The certified copies of the indictment/information/ complaint/judgment and warrant may be attached to the complaint as supporting evidence.[79]

3) On the basis of the fugitive complaint, the court should issue its warrant of arrest. A certified copy of the complaint and supporting affidavit must be attached to the warrant. (UCEA, § 13.)

4) The fugitive should then be taken into actual custody and served with a copy of the warrant and complaint.

5) The law enforcement officer taking the fugitive into custody should advise the fugitive that he may waive extradition if he desires, in which case he will be taken before a judge to be advised of his rights and to execute the waiver. The prosecuting attorney should prepare the waiver form. (See Form 6.)

79. Also, UCEA § 13 permits the filing of a "verified" fugitive complaint in those rare cases where asylum state officers receive reliable information the fugitive has committed an offense in another state, but charges have not yet been filed there. In such a case, the complainant's declaration or affidavit, and verification, should be attached to the fugitive complaint.

6) As soon as possible after the arrest, the fugitive should be taken before any available magistrate for arraignment. (UCEA, § 13.) The preferable court for arraignment is the court in which the fugitive complaint was filed.

7) If the fugitive has agreed to waive extradition, the waiver may be executed at the time of arraignment and the court may order the fugitive delivered over to agents of the demanding state.

8) If the fugitive has not agreed to waive extradition, he should be properly arraigned, the matter should be continued for 30 days and an identity hearing, where necessary, should be scheduled within a reasonable time (see pages 48-49). The court may grant bail unless the offense charged in the demanding state is punishable by death or life imprisonment. (See pp. 51-53.)

9) After arraignment, the demanding state prosecutor should be informed of the date of arrest, the date set for any identity hearing, and the date of the next court appearance regarding custody under the fugitive warrant.

3. *Arraignment and Waiver*[80]

a. *When to arraign*

When a fugitive is arrested without a warrant, the UCEA, section 14, provides that he must be taken before a magistrate "with all practicable speed" for arraignment and for filing of a fugitive complaint.[81] The act is silent with respect to arraignment following an arrest on a fugitive warrant issued

80. See Appendix I for a suggested procedure for arraigning and taking a waiver of extradition from the fugitive. Unless a state has modified it, the UCEA does not provide for the right to counsel at pre-governor's warrant proceedings. The courts are apparently split on the issue. (*Struve v. Wilcox* (Ida. 1978) 579 P.2d 1188 [right to counsel]; *Matter of Sanders* (Kan. App. 1985) 704 P.2d 386 [assumes right to counsel]; *Pruett v. Norris* (E.D. Ark. 1997) 959 F.Supp. 1066 [no right to counsel]; *State v. Jeleniewski* (2002) 791 A.2d 188 [extradition not a critical stage].)

81. It may be appropriate for the court to inquire into the person's competency to understand the extradition proceedings. (*State v. Frawley* (Mo. 2001) 59 S.W.3d 496.)

pursuant to section 13. However, the general rule is that the person arrested must be taken before a magistrate without unnecessary delay. In some states it is a misdemeanor to fail to take the person before a magistrate for timely arraignment.

b. ***Waiver***

1) ***Waiver executed in asylum state***

At any time following his fugitive arrest, the accused may waive extradition to the demanding state, i.e., waive issuance and service of a governor's warrant. Under the UCEA, section 25-A, a waiver made in the asylum state must be made in court by signing a written waiver after having been fully advised by the judge.[82] (See Form 6; Appendix I.) Once such a waiver is executed, the fugitive is in the same legal position as if a governor's warrant had been served.[83] Thus, he should not be released on bail, at least not without the consent of the officials from both states. Likewise, the court should not permit the fugitive to voluntarily return to the demanding state unless the demanding state officials have consented. Also, as mentioned earlier, one copy of the waiver is sent to the asylum state's governor, one filed with the court, and two given to the agent from the demanding state. (See fn. 76.)

2) ***Waiver "presigned" in demanding state***

Often as a condition of release on bail, probation or parole, a person is required to waive extradition should he be found in another state.[84] Many states will enforce such "presigned waivers."[85] If the asylum

82. *State v. Speller* (N.C. 1997) 481 S.E.2d 284.

83. Where local changes are pending in asylum state, the defendant's waiver is unenforceable until such time the defendant is timely tried and either convicted and sentenced or acquitted in the asylum state. (*Games-Neely v. Sanders* (W. Va. 2006) 641 S.E.2d 153.)

84. Such waivers are valid. (See, e.g., *O'Neal v. Coleman* (Wis. 2006) 2006 WL 1706426; *Goode v. Nobles* (Ga. 1999) 518 S.E.2d 122.)

85. See Appendix G for list of state's positions on enforcement of presigned waivers. For current

state does enforce them, the local prosecutor should contact the demanding state and have the appropriate documents sent to present at the hearing.

a) ***Hearing on presigned waivers***

At the hearing, the prosecuting attorney presents a certified copy of the demanding state's order conditionally releasing the fugitive, along with the condition that the person was required to waive extradition and a certified copy of the order directing the fugitive's return for violating the conditions of his release. The magistrate should accept the certified copies as conclusive proof of their contents and should presume the validity of the extradition waiver condition. If the magistrate finds probable cause to believe the arrested person is the same person named in the conditional release order and order commanding his return, the magistrate remands the person to custody and directs that he be delivered to agents of the demanding state.

b) ***Bail***

If the magistrate remands the person to custody for delivery to the demanding state's agents, bail should not be granted unless the district attorney stipulates, with the demanding state's concurrence, that bail may be set.

4. ***Identity Hearing***

If at the initial arraignment of the fugitive he denies being the person charged or convicted in the demanding state, the court may order that a hearing be held within a reasonable time to determine if the person in custody is the person charged.

NOTE: If the person does not affirmatively deny being the person charged in the other state, no identity hearing should be required.

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status, contact the state's attorney general. (See *Hinton v. Moritz* (W.D.N.Y. 1998) 11 F.Supp.2d 272; *Scull v. New Mexico* (10th Cir. 2000) 236 F.3d 588.)

The prosecutor's burden is simply to establish probable cause on the issues of identity and whether the person is charged or convicted. These facts may be shown in a variety of ways; however, if certified copies of appropriate documents are introduced, they should be accepted as an adequate proof. Witnesses from the demanding state should not be required.

Since only probable cause need be shown, and because this is a very preliminary stage of the criminal proceedings, formal rules of evidence should not apply and the allocation of the burden of proof is similar to what it would be in a habeas corpus challenge to extradition (see pp. 65-67). In fact, at this stage the evidence should be even more liberally construed. For example, it would not matter that the other state's complaint offered in support of the fugitive complaint is not subscribed and sworn before a magistrate, as would be required in support of a governor's warrant. All that must be shown is that the person is ***probably*** charged in the other state.

Obviously, an identity hearing is "waived," by implication, unless the accused denies he is the person charged. Also, the guilt or innocence of the accused may not be raised at this or any other stage of the proceedings in the asylum state.[86/]

5. ***Commitment for Governor's Warrant***

a. ***Mandatory commitment***

UCEA section 15 provides that if the magistrate is satisfied that the person arrested is the same person charged with a crime in the demanding state, the magistrate "must" order the fugitive committed to the county jail for a period of 30 days in order to allow time for a governor's warrant to be issued and served on the fugitive. However, as noted below, the fugitive may be admitted to bail in certain cases.

1) ***Commitment order***

The commitment order contemplated by this section is a "warrant reciting the accusation," and ordering the fugitive detained.

86. See UCEA section 20; *California v. Superior Court (Smolin)* (1987) 482 U.S. 400; *In re Golden* (1977) 65 Cal.App.3d 789.

2) ***Computation of time***

The 30-day time limitation on the mandatory commitment pursuant to this section is calculated from the date of the magistrate's commitment following his finding of probable cause.

b. ***Discretionary continuances***

1) ***Length***

UCEA section 17 provides that if the fugitive is not arrested on a governor's warrant at the end of the initial 30-day commitment, the court ***may*** recommit the fugitive for a further period not to exceed 60 days. In other words, a fugitive may validly be held for a total of 90 days on the original fugitive complaint.

This merely limits the time a person may be confined awaiting a governor's warrant; it does not require the warrant to be issued in 90 days.[87/] Also, this period should be tolled while local charges are pending.[88/]

2) ***Guiding principles***

The purpose of the provisions in the UCEA pertaining to arrest and commitment pending the issuance and service of a governor's warrant is to facilitate extradition, not to impose conditions upon it.[89/] Extradition documents and the extradition laws themselves are to be liberally construed so as to accomplish extradition.[90/] The provision for

87. *State v. Holliman* (Mont. 1991) 805 P.2d 52. The governor's warrant may be served on the person even if 90 days has run and the fugitive complaint has been dismissed. (*In re App. of Bembry* (Okla. 1995) 907 P.2d 1076.)

88. *Paley v. Bieluch* (Fla. App. 2001) 785 So.2d 692; *App. of Lane* (Kan. App. 1992) 845 P.2d 708.

89. See 17 *Hastings Law Journal*, page 767, and cases collected therein; also, *South Dakota v. Brown* (1978) 20 Cal.3d 765; *In re Albright* (1982) 129 Cal.App.3d 504; *Miller v. Warden* (Md. 1972) 287 A.2d 57; *State v. Sparks* (Ala. 1968) 215 So.2d 469; *Travis v. People* (Colo. 1957) 308 P.2d 997; *State ex rel. Wells v. Hanley* (Wis. 1947) 27 N.W.2d 373; *Ex parte King* (Me. 1942) 28 A.2d 562.

90. See UCEA section 27; *California v. Superior Court (Smolin)* (1987) 482 U.S. 400; *Brewer v. Goff* (10th Cir. 1943) 138 F.2d 710; *Ex parte Morgan* (S.D. Cal. 1948) 78 F.Supp. 756, affd. 175 F.2d 404, cert. den. 338 U.S. 826; *In re Fedder* (1956) 143 Cal.App.2d 103, 110.

discretionary continuance up to an additional 60 days constitutes recognition of the fact that the processing of formal extradition documents may take a considerable period of time. As a general rule, the discretion to continue a fugitive in custody pending receipt of a governor's warrant should be exercised in favor of extradition and, if it is shown that the demanding state is continuing its effort to process valid extradition documents, the court should grant sufficient time to do so as long as the maximum period of commitment (90 days) is not reached. It must be remembered that the extradition law was created for the benefit of the states, and not for the benefit of fugitives.[91/] Nevertheless, there is some disparity in the length of time courts in the various states will hold a fugitive awaiting a governor's warrant. (See Appendix H.)

It may also be possible to refile a new fugitive complaint if no governor's warrant has been received within 90 days. The prosecution should be able to truthfully represent that the demanding state is continuing to make a good-faith effort to provide the appropriate extradition documents. Also, if the 90 days run and the fugitive complaint is not refiled, a subsequently issued governor's warrant can be served and extradition can proceed. (See pp. 55-56.) Obviously, the dismissal of a fugitive complaint does not affect the demanding state's criminal charges.

c. ***Bail***

This section deals only with the bail provisions pertaining to arrest and commitment ***prior*** to service of the governor's warrant. With respect to bail on the governor's warrant, see pages 58-59.

1) ***Mandatory commitment (30 days)***

UCEA sections 15 and 16 provide that when a person is bound over for the 30-day period required by section 15, the magistrate ***may*** admit him to bail,

91. *In re Tenner* (1942) 20 Cal.2d 670; *In re Fedder* (1956) 143 Cal.App.2d 103, 110.

provided that the offense charged in the demanding state is not punishable by death or life imprisonment.[92] Any such undertaking must be conditioned upon the fugitive's appearance in court on the date set and his surrender upon the governor's warrant of rendition. "Life imprisonment" as used in this section probably means "express life" rather than a life maximum on an indeterminate sentence.[93] Similar bail provisions apply to the 60-day extension period provided under UCEA section 17.

2) ***Factors to consider***

In considering an application for bail, the court may consider the likelihood that the fugitive will appear at the next scheduled court appearance. Many states now recognize a "public safety" exception to the right to bail.[94] Once a person has been committed to await arrest and rendition on a governor's warrant, the court has found him to be a fugitive from justice and the amount of bail should be adjusted accordingly. The fact that the fugitive has already fled from the justice of the demanding state is a good argument for high bail.[95] It is recommended that the law enforcement agency having custody of the fugitive, or the local prosecutor, contact officials in the demanding state and request information or recommendations on the background of the fugitive and an appropriate bail.

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92. *State v. Morel* (N.J. 1992) 602 A.2d 285. A fugitive alleged to have escaped or absconded following conviction also should not be admitted to bail. Some states have specifically added such fugitives to those ineligible for bail release. (See, e.g., Calif. Pen. Code, § 1552.1.) The rationale is that these fugitives are already convicted, so there is no presumption of innocence. This would apply to anyone wanted for an unsatisfied judgment.

93. No case has been found which construes the meaning of "life imprisonment" as used in section 15. The Eighth Amendment to the United States Constitution guarantees every person the right to bail unless charged with a capital offense. Any restriction on the right to bail is strictly construed. (E.g., *In re Underwood* (1973) 9 Cal.3d 345.)

94. E.g., *In re Nordin* (1983) 143 Cal.App.3d 538.

95. *State v. Carey* (Mo. App. 1996) 914 S.W.2d 406 [failure to waive extradition or voluntarily return to demanding state is evidence of intent *not* to appear in court as required].

NOTE: A "warrantless" arrest under UCEA section 14 is not an execution of the demanding state's arrest warrant. (See NOTE, p. 42.) The arresting/booking agency should not accept bail on that out-of-state warrant. Also, the bail amount shown on that warrant is not binding on the asylum state judge.

6. ***Governor's Hearing***

There is no provision anywhere in the extradition law for a governor's hearing prior to or after issuance of a warrant of rendition. The courts have uniformly held that there is no right to such a hearing,[96] and in some states hearings are not available.

At most, such hearings are very rarely granted, especially since the decision in *Puerto Rico v. Branstad* (1987) 483 U.S. 219 [107 S.Ct. 2802, 97 L.Ed.2d 187]. In *Branstad*, the Supreme Court held that extradition is a mandatory constitutional duty, enforceable by federal mandate against asylum state governors where the statutory and constitutional requirements have been met.[97] The notion of governor's "discretion," historically based on the decision in *Kentucky v. Dennison* (1861) 65 U.S. 66, was eliminated. Therefore, absolutely no purpose could be served by a governor's hearing.

However, in cases where extradition is ***not*** constitutionally mandated, but is ***permitted*** by statute (e.g., nonfugitive cases under UCEA, § 6, and cases where the accused is in prison or undergoing prosecution in the asylum state), governors do have discretion to grant or deny another governor's request.[98] Only in those cases, and only where the accused can show some compelling legal or equitable argument against extradition, might a hearing be granted. A governor's denial of extradition is not binding on future governors.[99]

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96. *Marbles v. Creecy* (1909) 215 U.S. 63; *Munsey v. Clough* (1905) 196 U.S. 364; *Gibson v. Beall* (D.C. Cir. 1957) 249 F.2d 489; *Rafferty ex rel. Huie Fong v. Bligh* (1932) 55 F.2d 189; *Horne v. Wilson* (E.D. Tenn. 1970) 316 F.Supp. 247; *Martin v. Maryland* (D.C. 1972) 287 A.2d 823; *Ex parte Roberts* (Tex. 1972) 479 S.W.2d 293; *People v. Hamilton* (Ill. App. 1983) 455 N.E.2d 891.

97. *White v. King County* (Wash. 1988) 748 P.2d 616; *Alabama v. Engler* (6th Cir. 1996) 85 F.3d 1205.

98. *State v. Robbins* (N.J. 1991) 590 A.2d 1133; *Jenkins v. Garrison* (Ga. 1995) 453 S.E.2d 698; *Kennon v. Hill* (10th Cir. 1995) 44 F.3d 904 [Gov. can place conditions (no death penalty) on extradition in nonfugitive case]; *Woodall v. State* (Ala. App. 1997) 730 So.2d 627 [contrary: Gov. has *no* auhority to place no-death-penalty condition on nonfugitive exradition]; *Breeden v. N.J. Dept. of Corrections* (N.J. 1993) 625 A.2d 1125 [Gov's. duty to extradite does not mature until asylum state term over].

99. *Alabama v. Engler* (6th Cir. 1996) 85 F.3d 1205.

a. ***Application for hearing***

The fugitive's request for a governor's hearing should be in writing, accompanied by a copy of his waiver of the statutory time limitations. (See paragraph d., *infra*.) The request should set forth each legal and equitable claim being raised against extradition. It should list the possible witnesses and what their testimony would be. The application should be received by the governor's office *before* the governor's rendition warrant issues.

b. ***Nature of hearing***

The hearing itself is very informal, usually presided over by the governor's extradition assistant or assistant legal affairs secretary. The rules of evidence do not apply. Those present usually include the hearing officer, the fugitive and his attorney, and a deputy attorney general. The latter is not an advocate, but will represent the interests of the demanding state to some extent. He also advises the hearing officer on legal questions related to extradition.

c. ***Issues considered***

The governor will entertain legal challenges to extradition identical to those which can be raised on habeas corpus, including (1) identity, (2) fugitivity, (3) whether the accused is charged with a crime, and (4) whether the extradition papers are in order. (See pp. 60-65.) The question of guilt or innocence will not be considered.[100/] Additionally, the governor may consider any equitable argument which shows that extradition would impose an extreme hardship, work an inherent injustice, or be contrary to public policy.

d. ***Effect on fugitive commitment***

The legal effect of a governor's hearing upon the time limitations of the court commitments pursuant to UCEA sections 15-17 is not entirely clear. An Illinois court has held that a request for a governor's hearing operates as a waiver of further proceedings on the fugitive complaint.[101/] Since a

100. See UCEA section 20; *App. of Mahler* (N.J. 1981) 426 A.2d 1021, 1030.

101. *People ex rel. Gilbert v. Babb* (Ill. 1953) 114 N.E.2d 358.

governor's hearing is an extraordinary proceeding undertaken solely for the benefit of the fugitive, as a condition of a governor's hearing, most governors require a written waiver of the time limitations contained in sections 15 and 17. Ideally, a copy of this written waiver should be lodged with the court, so that the court is advised that a hearing has been requested and that further court proceedings are presently unnecessary. (See Form 8.)

7. ***Service of the Governor's Warrant***

a. ***New arrest***

A governor's rendition warrant is an original warrant of arrest and supersedes any existing fugitive warrant (commitment order) issued pursuant to UCEA sections 15-17. [102] Accordingly, it is necessary to serve the warrant on the fugitive, whether or not he is in custody, and to take him into actual custody. UCEA section 8 authorizes the fugitive's arrest "at any time and any place where he may be found within the state." Therefore, there is no need for special authorization to serve the warrant at night. Further, a governor's warrant may be served prior to any proceedings under sections 13-17. If so, the procedures outlined in those sections (identity hearing, bail, etc.) are inapplicable.

b. ***Effect on previous proceedings***

Since the governor's warrant supersedes the existing fugitive warrant, complaint and commitment order, its issuance and service renders moot any defects or deficiencies which may have occurred or may appear in the proceedings under sections 13-17.[103] Those proceedings were merely instituted in aid of the issuance of the governor's warrant.

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102. See UCEA sections 8-9; see also *Ex parte Cubreth* (1875) 49 Cal. 435.

103. *In re App. of Bembry* (Okla. 1995) 907 P.2d 1076; *State v. Wallace* (Neb. 1992) 484 N.W.2d 477; *State v. Luster* (Fla. 1992) 596 So.2d 454; *Echols v. State* (Tex.App. 1991) 810 S.W.2d 430; *Parks v. Bourbeau* (Conn. 1984) 477 A.2d 636; *Brightman v. Withrow* (W. Va. 1983) 304 S.E.2d 688; *Casler v. Nelson* (Colo. 1983) 661 P.2d 1166; *Miller v. Warden* (Md. 1972) 287 A.2d 57; *Carter v. Coleman* (Fla. 1984) 443 So.2d 491; *Beauchamp v. Elrod* (Ill. 1985) 484 N.E.2d 817; *Smith v. Cauthron* (Ark. 1982) 631 S.W.2d 10; *Emig v. Hayward* (Utah 1985) 703 P.2d 1043; *Lattimore v. Gedney* (Pa. 1976) 363 A.2d 786; *Petition of Blackburn* (Mont. 1985) 701 P.2d 715; *Cota v. Benson* (Ga. 1977) 238 S.E.2d 332.

c. ***Local charges pending***

Occasionally there will be local charges pending against the fugitive at the time the governor's warrant is received and, more often than not, the governor is not aware of those charges at the time the warrant is signed. In these cases, the law enforcement officer receiving the warrant should immediately contact the prosecuting attorney, advise him that he has received a warrant of rendition, and request the prosecuting attorney's advice as to whether he wishes to complete local prosecution before the fugitive is delivered over to the demanding state. If he does wish to complete prosecution, the law enforcement officer should immediately inform the governor's office of the local charges and of the prosecuting attorney's desire to complete prosecution. The final decision whether to immediately render up the fugitive is with the governor and, although he will generally defer to the wishes of the local prosecutor, he is not legally required to do so. UCEA section 19 provides that the governor may immediately render up the fugitive, or he may "hold him until he has been tried and discharged or convicted and punished in this state."[104/] Normally, disposition of local charges, including sentencing, should be completed before the fugitive is made available for rendition.

This same procedure should be followed where there are local charges pending in multiple asylum state jurisdictions. The governor's warrant should accompany the fugitive until all local charges are resolved.

1) ***Immediate rendition***

If the governor determines to deliver up the fugitive to the demanding state notwithstanding the pending local charges, the law enforcement officer should serve the warrant on the fugitive in the manner described below. Occasionally, a fugitive against whom local charges are pending will waive extradition, in hopes that he can speed his removal from the state and avoid the local

104. *Yates v. Gilless* (Tenn.Cr.App. 1992) 841 S.W.2d 332.

charges. Of course, UCEA section 19 prevents him from doing this.[105/]

2) ***Withhold service***

The governor may direct the law enforcement officer to withhold service of the warrant until after completion of the local proceedings. In this case, the law enforcement officer should advise the governor when local prosecution has been completed and the result of that prosecution. If the fugitive has been convicted, and the court has granted probation on condition that the defendant go to the demanding state, the governor may order service and execution of the warrant. If the fugitive has been sentenced to either county jail or state prison, the governor may order immediate service of the warrant, or he may order that the warrant be held until service of the sentence has been completed. If the defendant has been sentenced to state prison, the governor will generally require the demanding state to supplement its requisition with an executive agreement before service of the warrant or seek custody under the IAD.

3) ***Lodging the warrant as a detainer***

As noted above, section 19 authorizes the governor to "hold" the fugitive until he has completed his sentence before rendering him up to the demanding state. This

105. If the demanding state has a need to prosecute the fugitive on its charges at the earliest possible time and it appears the local charges will not be resolved quickly, the prosecutor and governor may agree to extradite the fugitive forthwith, with an executive agreement that the fugitive be returned to the asylum state following the other state's proceedings if the local prosecutor still desires to go forward with his charges. (See Form 4.) While a waiver of jurisdiction will generally not be implied by the asylum state's transfer of custody (*In re Patterson* (1966) 64 Cal.2d 357; *Ex parte Guinn* (Tex. 1955) 284 S.W.2d 721; *United States ex rel. Moses v. Kipp* (7th Cir. 1956) 232 F.2d 147), the executive agreement should be utilized in such an instance, because the legality of the fugitive's later return to the asylum state would be litigated in another state where the law relating to waiver of jurisdiction may be different. Also, a few states (e.g., Georgia, Kentucky) have modified their version of section 19 to specifically provide that the asylum state governor may surrender the fugitive to the demanding state upon appropriate conditions, including the condition that the fugitive be returned after trial in the demanding state. This accomplishes the same result as the executive agreement mentioned above. In addition, it has been held that a surrendering state's lodging of a detainer with the receiving state demonstrates there is no waiver of jurisdiction. (*White v. Kelly* (D. Colo. 2000) 82 F.Supp.2d 1184.)

section appears to allow the governor to order that the warrant be immediately served upon the fugitive while at the same time ordering that execution of the warrant be withheld. In this case, the fugitive should be arraigned on the warrant, but informed that the warrant will simply be lodged against him as a "detainer" until local prosecution is completed or until he has served his sentence.[106]

d. ***Arraignment***

UCEA section 10 provides that the accused ***must*** be arraigned on the governor's warrant "***forthwith***." It is a misdemeanor to deliver over a fugitive in willful disobedience to this requirement. (UCEA, § 11.) Also, willful failure to provide a pretransfer extradition hearing could trigger civil action against the custodian.[107] See Appendix J for suggested arraignment procedures.

e. ***Bail***

In most states, case or statutory law expressly precludes bail or other conditional release following service of the governor's rendition warrant unless the court finds for the fugitive on any of the four issues which may be raised to challenge extradition.[108] This no-bail rule has been held constitutional.[109]

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106. However, the warrant does not trigger application of the Interstate Agreement on Detainers in this situation. (*State v. Roberson* (Wash. App. 1995) 897 P.2d 443.)

107. *White v. Armontrout* (8th Cir. 1994) 29 F.3d 357, 360.

108. See, e.g., California Penal Code section 1550.1; *State v. J.M.W.* (Ala. 2005) 936 So.2d 555*; Boudreaux* v. *State* (Ut. App. 1999) 989 P.2d 1103; *In re Ford* (Mich. App. 1991) 468 N.W.2d 260; *Emig v. Hayward* (Ut. 1978) 703 P.2d 1043, 1049-1050; *Ludahl v. Larson* (Ut. 1978) 586 P.2d 439; *State v. Second Judicial District Court* (Nev. 1970) 471 P.2d 224, 225; *Deas v. Weinshienk* (Colo. 1975) 533 P.2d 496, 497; *State v. Truman* (Az. App. 1977) 564 P.2d 96, 97; *State ex rel. Schiff v. Brennan* (N. M. 1983) 662 P.2d 642, 643; *In re Lucas* (N. J. 1975) 343 A.2d 845, 848-850; *Grano v. State* (Del. 1969) 257 A.2d 768; *Buchanan v. State* (Fla. 1964) 166 So.2d 596; *Ex parte Grabel* (Ky. 1952) 248 S.W.2d 343; *In re Amendsen* (N. D. 1945) 19 N.W.2d 918; *State ex rel. Stringer v. Quigg* (Fla. 1926) 107 So. 409; *Annot*. (1976) 56 A.L.R.2d 668, 675, and A.L.R. Later Case Service, 56-63.

109. See *People v. Superior Court (Ruiz)* (1986) 187 Cal.App.3d 686.

8. ***Habeas Corpus***

a. ***Authority***

Pursuant to the UCEA section 10, a fugitive arrested under a governor's warrant has an absolute right to counsel and to a reasonable opportunity to file a petition for writ of habeas corpus challenging his extradition.[110/]

b. ***Time***

Section 10 declares that the person should be allowed a "reasonable time" to file his habeas corpus petition. Because the issues which can be raised to challenge the extradition at this point are very limited, usually 10 days is considered "reasonable" for this purpose. (See pp. 66-72.)

c. ***Where to file***

The petition must first be filed in the appropriate court of the county in which the fugitive is detained. As a general rule, resort to the federal courts is possible only after all available state court remedies have been exhausted.[111/]

d. ***Duty of court***

Once a habeas corpus petition is filed, the court may dismiss the petition or issue an order to show cause.

Since the extradition law contemplates the ***prompt*** return of the fugitive,[112/] the court should forthwith review the petition and

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110. Once a governor has granted extradition, the defendant's sole remedy is via habeas corpus. (*Powell v. Brown* (Ga. 2007) 641 S.E. 2d 519; *Ex parte Lebron* (Tex. App. 1997) 937 S.W.2d 590.) Requesting counsel for the extradition proceedings does not invoke the Sixth Amendment right to counsel at subsequent criminal proceedings. (*Chewning v. Rogerson* (8th Cir. 1994) 29 F.3d 418 [extradition proceedings do not carry Sixth Amendment guarantee of assistance of counsel]; *Commonwealth v. Eichinger* (Penn. 2007) 915 A.2d 1122; *Anderson v. Alameida* (9th Cir. 2005) 397 F3d 1175.)

111. See 28 United States Code section 2254; *Preiser v. Rodriguez* (1973) 411 U.S. 475; *Davis v. O'Connell* (8th Cir. 1950) 185 F.2d 513, cert. den. 341 U.S. 941; *Flatt v. Williams* (M.D. Tenn. 1987) 669 F.Supp. 841; *Dickerson v. Louisiana* (5th Cir. 1987) 816 F.2d 220; *Watson v. Alabama* (11th Cir. 1988) 841 F.2d 1074; *Breeze v. Trickey* (8th Cir. 1987) 824 F.2d 653.

112. *United States ex rel. Vitiello v. Flood* (2nd Cir. 1967) 374 F.2d 554; *Smith v. Idaho* (9th Cir. 1967) 373 F.2d 149; see also *Sweeney v. Woodall* (1952) 344 U.S. 86.

either summarily dismiss it or issue an order to show cause why it should not be granted.

The UCEA does not prescribe the length of time to be allowed to respond to an order to show cause. However, since the prompt return of the fugitive is contemplated, the response to the order should be due at the earliest date reasonable under the circumstances of the case. If additional factual materials must be obtained from the demanding state, additional time may be required. The fugitive complaint proceedings should be stayed pending disposition of the habeas corpus petition. If the petition is denied, the fugitive should be rendered over to the demanding state's agents. Usually, there is no automatic stay of the extradition to allow the fugitive to seek relief in another court.

e. ***Issues***

Only four limited issues may be raised on habeas corpus to challenge extradition (see *infra*). The question of guilt or innocence may ***not*** be raised in the courts of the asylum state.[113/] Further, no affirmative defenses to the substantive offense, whether they be statutory or constitutional, may be raised in the asylum state. These include such defenses as lack of a speedy trial, double jeopardy, the unconstitutionality of the statute under which the fugitive is charged, the unconstitutionality of the demanding state's prisons and that extradition was brought for an improper prosecutorial motive.[114/] Further, the failure of a state to extradite a fugitive

113. UCEA section 20; *In re Golden* (1977) 65 Cal.App.3d 789; *Robertson v. State* (Ind. 1992) 587 N.E.2d 117; *Kerr v. Watson* (Idaho 1982) 649 P.2d 1234; *Crosby v. Griswold* (Colo. 1982) 650 P.2d 568; see also *Michigan v. Doran* (1978) 439 U.S. 282; *Smith v. Idaho* (9th Cir. 1967) 373 F.2d 149; *Ibarra v. State* (Tex. App. 1997) 961 S.W.2d 415.

114. See *New Mexico ex rel. Ortiz v. Reed* (1998) 524 U.S. 151; *California v. Superior Court (Smolin)* (1987) 482 U.S. 400; *Pacileo v. Walker* (1980) 449 U.S. 86; *Biddinger v. Comm. of Police* (1917) 245 U.S. 128; *In re Cooper* (1960) 53 Cal.2d 772; *In re Murdock* (1936) 5 Cal.2d 644; *Price v. Pitchess* (9th Cir. 1977) 556 F.2d 926; *McDonald v. Burrows* (5th Cir. 1984) 731 F.2d 294; *Strachan v. Colon* (2d Cir. 1991) 941 F.2d 128; *Coungeris v. Sheahan* (7th Cir. 1993) 11 F.3d 726; *People v. Young* (Ill. 1992) 607 N.E.2d 125; *Baldwin v. State* (Ut. 1992) 842 P.2d 927; *Scott v. Walker* (Ga. 1985) 324 S.E.2d 187; *Rodriguez v. Sandoval* (Colo. 1984) 680 P.2d 1278; *Fagan v. Massey* (Ga. 1984) 322 S.E.2d 59; *Wolfe v. Au* (Hawaii 1984) 686 P.2d 16; *Ex parte McDonald* (Tex. 1982) 631 S.W.2d 222; *State v. McCurley* (Miss. 1993) 627 So.2d 339; *Harris v. State* (Ala. 1995) 669 So.2d 1033; *Castriotta v. State* (Nev. 1995) 888 P.2d 927; *State v. Long* (Tenn. 1994) 871 S.W.2d 148; *Stelbacky v. State* (Tex. App. 2000) 22 S.W.3d 583 [double jeopardy]; *Rogers v. State* (Fla. 1998) 717 So.2d 460 [right to counsel].

whose whereabouts are known to the demanding state is not a defense to a subsequent extradition attempt.[115] Also, extradition may not be defeated on the grounds that the IAD was violated in an earlier attempt to return the fugitive.[116] Likewise unavailable is the defense that the fugitive was mentally incompetent at the time of the crime.[117] A defendant may be extradited while his appeal or other post-conviction proceedings are pending in the asylum state.[118] And a claim that extradition would violate the defendant's right to counsel in another case pending in the asylum state is unavailing.[119]

Under *Michigan v. Doran* (1978) 439 U.S. 282, 289, the only issues which may be raised in the courts of the asylum state are (1) whether the person in custody is the same person named in the extradition request, (2) whether the person is a fugitive (or otherwise subject to extradition), (3) whether the person is charged with or convicted of a crime in the demanding state,

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115. *People v. Sup. Ct.(Lopez)* (1982) 130 Cal.App.3d 776; *Strachan v. Colon* (2d Cir. 1991) 941 F.2d 128; *Ex parte Sanchez* (Tex. App. 1999) 987 S.W.2d 951; *McLeod* v. *Barrett* (Ga. 1999) 522 S.E.2d 219; *In re Gilchrist* (1982) 134 Cal.App.3d 867; *Matter of Coiley* (Wash. App. 1988) 764 P.2d 661; *Crater v. Furlong* (Colo. 1994) 884 P.2d 1127 [no waiver of jurisdiction]. See also *Aycox v. Lytle* (10th Cir. 1999) 196 F.3d 1174 [no right to "speedy extradition"]; *In re Walton* (2002) 99 Cal.App.4th 934 [same]; cf. *State v. Bigelow* (Or. 2005) 106 P.3d 162; *People v. Davis* (NY SC 2006) 29 A.D.3d 814.

116. *Dunn v. Hindman* (Kan.App. 1993) 855 P.2d 994.

117. See *Drew v. Thaw* (1914) 235 U.S. 432. However, there is authority which allows a fugitive to challenge extradition on the basis that he is mentally incompetent to understand the nature of the extradition proceedings against him. (*State v. Patton* (Kan. 2008) 176 P.3d 151; *People ex rel. Fusco v. Sera* (N.Y. 1984) 472 N.Y.S.2d 564; *Wilkes v. Brennan* (N.Y. 1980) 433 N.Y.S.2d 817; *Oliver v. Barrett* (Ga. 1998) 500 S.E. 2d 908; *Kostic v. Smedley* (Alaska 1974) 522 P.2d 535; cf. *Kellems v. Buchignani* (Ky. 1974) 518 S.W.2d 788; *Luker v. Koch* (Colo. 1971) 489 P.2d 191.) This issue is separate and distinct from the issue of the accused's competency to stand trial and a lower standard of competency is required for extradition than for trial. (*Lopez-Smith v. Hood* (9th Cir. 1997) 121 F.3d 1322, 1324-1325 [incompetency to stand trial irrelevant to extradition proceedings]; *Romeo v. Roache* (1st Cir. 1987) 820 F.2d 540; *Kellems v. Buchignani* (Ky. 1974) 518 S.W.2d 788; see also *Charlton v. Kelly* (1913) 229 U.S. 447.) The level of competency required is that the accused must be able to understand the nature of the proceedings and to "participate intelligently to the extent his participation is required." (See *Chavez v. United States* (9th Cir. 1981) 656 F.2d 512; *Bundy v. Dugger* (11th Cir. 1988) 850 F.2d 1402; *Ex parte Potter* (Tex. App. 2000) 21 S.W.3d 290; *Oliver v. Barrett* (Ga. 1998) 500 S.E.2d 908; *In re Hinnant* (Mass. 1997) 678 N.E.2d 1314.)

118. *Pruett v. Norris* (E.D. Ark. 1997) 959 F.Supp. 1066; *Woodall v. State* (Ala. App. 1997) 730 So.2d 627.

119. *Rogers v. State* (Fla. 1998) 717 So.2d 460.

and (4) whether the extradition documents on their face are in order.[120/]

1) ***Identity***

The essence of this challenge to extradition is the claim that the person before the court is ***not the person named in the extradition request and governor's warrant***. The issue is ***not*** whether that individual is the person who committed the charged offense -- that is a substantive defense to be raised in the demanding state.[121/] Normally, identity as the person wanted may be established through photographs and/or fingerprints.[122/] An error in the initial of the person's name is insufficient to show lack of identity.[123/]

2) ***Fugitivity***

"Fugitivity" is established where it is shown that the person named in the extradition request was in the demanding state at the time the alleged offense was committed and was thereafter found in the asylum state.[124/] It does not matter ***how*** the person left the demanding state -- he may have left involuntarily or even under legal compulsion -- he is a "fugitive" under extradition law.[125/] Actually, the requirement of

120. *California v. Superior Court (Smolin)* (1987) 482 U.S. 400 [96 L.Ed.2d 332]; *State v. Wallace* (Neb. 1992) 484 N.W.2d 477; *Rhodes v. North Carolina* (Ga. 1986) 338 S.E.2d 676; *Wright v. State* (Tex. App. 1986) 717 S.W.2d 485; *People v. Boswell* (Ill. 1986) 500 N.E.2d 116; *In re Extradition of Chandler* (W.Va. 2000) 534 S.E.2d 385; *State v. Frawley* (Mo. 2001) 59 S.W.3d 496.

121. See *Owens v. State* (Ala. 1982) 410 So.2d 479; *Comm. ex rel. Coades v. Gable* (Pa. 1970) 264 A.2d 716.

122. *In re Haynes* (Vt. 1990) 583 A.2d 88.

123. *Fullerton v. McCord* (Ark. 1999) 2 S.W.3d 775.

124. *Koenig v. Poskochil* (Neb. 1991) 469 N.W.2d 523; *People ex rel. Strachan v. Colon* (1990) 559 N.Y.S.2d 328; *State v. Cherry* (Oh. App. 2007) 870 N.E.2d 808; *Ely v. Sheahan* (Ill. 2005) 838 N.E.2d 26.

125. *New Mexico ex rel. Ortiz v. Reed* (1998) 524 U.S. 151; *In re Fedder* (1956) 143 Cal.App.2d 103; *Appleyard v. Massachusetts* (1906) 203 U.S. 222; *In re Murdock* (1936) 5 Cal.2d 644; *People v. Superior Court (Lopez)* (1982) 130 Cal.App.3d 776; *Chamberlain v. Celeste* (6th Cir. 1984) 729 F.2d 1071; *Petition of Gay* (Mass. 1990) 548 N.E.2d 879; *Gee v. Kansas* (10th Cir. 1990) 912 F.2d 414; *State ex rel. Sheppard v. Kisner* (W.Va. 1990) 394 S.E.2d 906; *Dunn v. Hindman* (D. Kan. 1993) 836 F.Supp. 750; *White v. Armontrout* (8th Cir.

"fugitivity" has been virtually eliminated in certain cases through the adoption of section 6 of the UCEA. This section, which has been held constitutional (*Whelan v. Noelle* (D. Or. 1997) 966 F.Supp. 992; *In re Morgan* (1948) 86 Cal.App.2d 217), permits extradition of persons who commit acts while in another state intentionally resulting in a crime in the demanding state. Thus, the issue is really whether the person is a fugitive ***or otherwise subject to extradition*** under section 6 of the UCEA.[126] However, the question of fugitivity may still be important, since nonfugitive extraditions are discretionary with the governor, not mandatory.[127] ***The demanding state's requisition and supporting papers should clearly state whether the accused is a fugitive or the request is under section 6 for a nonfugitive.***[128]

3) ***Charged with a crime***

The UCEA section 3 and many cases state that the fugitive must be "substantially charged" with a crime.[129] This simply means that the "substance" of a criminal charge must appear in the extradition documents; it has nothing to do with the type or seriousness of the crime charged. Whether the person is "substantially charged" is a question of law to be determined on the face of the documents.[130] Charges

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1994) 29 F.3d 357, 360; *Marini v. Gibson* (Ga. 1996) 478 S.E.2d 767; *People ex rel. Schank v. Gerace* (1997) 661 N.Y.S.2d 403; *Walker v. United States* (D.C. Cir. 2001) 775 A.2d 1107; *Clark v. Commissioner of Correction* (Conn. 2007) 917 A.2d 1.

126. *State v. Hunt* (Fla.App. 1991) 584 So.2d 229; *Ex parte Lepf* (Tex. 1993) 848 S.W.2d 758; *In re Adams* (Ohio 1989) 579 N.E.2d 752; *Gruber v. Morgenthau* (2000) 709 N.Y.S.2d 184; *Fullerton v. McCord* (Ark. 1999) 2 S.W.3d 775.

127. E.g., see *Ex parte Holden* (Tex. App. 1986) 719 S.W.2d 678; *In re Ropp* (Vt. 1988) 541 A.2d 86; *Kennon v. State* (Kan. 1991) 809 P.2d 546; *Jenkins v. Garrison* (Ga. 1995) 453 S.E.2d 698; *Koenig v. Poskochil* (Neb. 1991) 469 N.W.2d 523.

128. See *In re Vasquez* (Mass. 1999) 705 N.E.2d 606 [where governor's warrant falsely stated defendant was a fugitive, supporting papers clarified defendant was a nonfugitive requested under section 6].

129. See *Roberts v. Reilly* (1885) 116 U.S. 80, 95; *Johnson v. Cronin* (Colo. 1984) 690 P.2d 1277; *Proctor v. Skinner* (Idaho 1982) 659 P.2d 779.

130. *California* v. *Superior Court (Smolin)* (1987) 482 U.S. 400; *Roberts v. Reilly* (1885) 116 U.S. 80;

made in the language of the demanding state's statute are sufficient.[131]

A court in the asylum state will not look behind the demanding state's charges to determine if the request is a pretext for civil action.[132]

A person who has been convicted and thereafter escaped or absconded, resulting in an unsatisfied judgment or sentence, is "charged" for purposes of extradition.[133]

Also, a convicted person who was allowed to leave (no escape or abscond), whose judgment remains unsatisfied, is "charged" for extradition purposes.[134] These would include cases where the person is returned to the sending state following trial after removal under the IAD, and where a prisoner is transferred to another state to serve a concurrent sentence there.

4) ***Legal sufficiency of documents***

The documents should be viewed in their entirety to determine if the essential contents are present.[135] Minor defects such as clerical errors, immaterial inconsistencies, superfluous documents, etc., are not

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Burke v. State (Maine 1970) 265 A.2d 489; *Parks v. Bourbeau* (Conn. 1984) 477 A.2d 636; *Brode v. Power* (Conn. 1974) 332 A.2d 376; *Sloss v. Sheriff* (Kan. 1982) 648 P.2d 255; *White v. King Co.* (Wash. 1988) 748 P.2d 616. (Arguably, the *Smolin* case effectively removed "substantially" from this requirement.)

131. *Cates v. Sullivan* (Colo. 1985) 696 P.2d 322; *Dodd v. North Carolina* (N.C. 1982) 287 S.E.2d 435; *People v. Crandall* (Ill. App. 1985) 475 N.E.2d 11; *State v. Belcher* (W.Va. 1992) 422 S.E.2d 640.

132. *Ex Parte Lekavich* (Tx. Crim.App. 2004) 145 S.W. 3d 699*; Oliver v. Barrett* (Ga. 1998) 500 S.E.2d 908.

133. See UCEA, § 3; *Rodriguez v. Sandoval* (Colo. 1984) 680 P.2d 1278; *Chamberlain v. Celeste* (6th Cir. 1984) 729 F.2d 1071; *Ellis v. Darr* (Kan. 1982) 640 P.2d 361; *Blackburn v. Johnson* (Colo. 1982) 647 P.2d 238; *App. of Chapa* (Ida. App. 1989) 767 P.2d 282; *Naisbitt v. Raichi* (Ore. App. 1996) 917 P.2d 59.

134. *In re Fedder* (1956) 143 Cal.App.2d 103, 110; *Chamberlain v. Celeste* (6th Cir. 1984) 729 F.2d 1071; *Noe v. State* (Tex. 1983) 654 S.W.2d 701, 702; *Ellerman v. State* (Okla. 1983) 660 P.2d 647; *Sloss v. Sheriff* (Kan. 1982) 648 P.2d 255; *Travis v. People* (Colo. 1975) 308 P.2d 997; *People ex rel. Schank v. Gerace* (1997) 661 N.Y.S.2d 403, 408; *Walker v. United States* (D.C. Cir. 2001) 775 A.2d 1107.

135. See *People v. Meschine* (Ill. App. 2000) 734 N.E.2d 131.

fatal.[136] Also, if the demanding governor, in his requisition, has certified the appropriate documents as true and authentic, no further inquiry should be made into their authenticity.[137] Further, stamped or machine-made signatures do not invalidate the documents.[138] Matters of proper pleading should be raised only in the demanding state, not as a challenge to extradition.[139] Errors in prior papers, if later corrected, will not invalidate the extradition request.[140]

f. ***Burden of proof***

Introduction of the governor's extradition warrant creates a presumption that all the requirements for extradition have been met.[141]

Once this prima facie showing has been made, it is the petitioner's burden to prove by clear and convincing evidence that he is not the person wanted or was not in the demanding state at the time of the crimes.[142] A mere conflict in the

136. See *In re Whitehouse* (Mass. App. 1984) 467 N.E.2d 228; *Hester v. State* (Ala. App. 1983) 444 So.2d 1; *In re Cooper* (1960) 53 Cal.2d 772; *Moore v. State* (Fla. 1981) 407 So.2d 991; *Pet. of Upton* (Mass. 1982) 439 N.E.2d 1216; *Morris v. Nelson* (Colo. 1983) 659 P.2d 1386; *Kelly v. State* (Alaska App. 1990) 803 P.2d 876; *Matter of Henrichs* (Mont. 1989) 771 P.2d 967.

137. UCEA section 3; *State v. Wallace* (Neb. 1992) 484 N.W.2d 477; *Cates v. Sullivan* (Colo. 1985) 696 P.2d 322; *Fain v. Bourbeau* (Conn. 1985) 488 A.2d 824; *Ex parte Allen* (Tex. 1985) 699 S.W.2d 886; *Comm. ex rel. Meshel v. Gedney* (Pa. 1978) 384 A.2d 1340.

138. *State v. Samuals* (La. 2005) 894 So. 2d 1182; *In re Moskaluk* (Vt. 1991) 591 A.2d 95; *Ex parte Davenport* (Tex. App. 1986) 719 S.W.2d 391.

139. *Matter of O'Riordan* (Kan. 1982) 643 P.2d 1147; *In re Whitehouse* (Mass. App. 1984) 467 N.E.2d 228; *Stelbacky v. State* (Tex. App. 2000) 22 S.W.3d 583; *Jenkins v. Garrison* (Ga. 1995) 453 S.E.2d 698.

140. *Gruber v. Morgenthau* (2000) 709 N.Y.S.2d 184; *Ex parte McClintock* (Tex. App. 1997) 945 S.W.2d 188.

141. *Michigan v. Doran* (1978) 439 U.S. 282, 289; *Pacileo v. Walker* (1980) 449 U.S. 86, 87; *In re Golden* (1977) 65 Cal.App.3d 789; *State v. Scoratow* (Fla. 1984) 456 So.2d 922; *Johnson v. Cronin* (Colo. 1984) 690 P.2d 1277; *Ex parte Shoels* (Tex. 1982) 643 S.W.2d 761; *In re Jones* (Vt. 1995) 669 A.2d 1199; *Kennon v. Hill* (10th Cir. 1995) 44 F.3d 904; *State v. McCurley* (Miss. 1993) 627 So.2d 339; *Ex parte Lebron* (Tex. App. 1997) 937 S.W.2d 590.

142. *South Carolina v. Bailey* (1933) 289 U.S. 412, 422; *In re Rock* (1958) 161 Cal.App.2d 723; *In re Fedder* (1956) 143 Cal.App.2d 103; *Johnson v. Cronin* (Colo. 1984) 690 P.2d 1277; *Lott v. Bechtold* (W. Va. 1982) 289 S.E.2d 210; *State v. Rosati* (R.I. 1991) 594 A.2d 885; *State ex rel. Mikulik v. Fields* (W.Va. 1991) 410 S.E.2d 717; *Comm. v. Valentin* (Pa. Super. 1996) 672 A.2d 338; *O'Bryant* v. *Brown* (Ga. 2001) 558 S.E.2d 2

evidence is usually insufficient to satisfy petitioner's burden.[143] While the state's prima facie showing is made simply by the production of the governor's rendition warrant, in virtually all cases additional documentary evidence should be offered to establish identity and/or fugitivity.[144] It was held in one case that the petitioner met his burden of proof when he produced two witnesses who corroborated his testimony that he was not in the demanding state when the crime was committed and the state simply relied upon the governor's warrant.[145]

g. ***Evidence***

It is not contemplated in extradition proceedings that witnesses from the demanding state be produced in the asylum state. Any evidence which must be produced by the state may be done through affidavits and other documentation.[146] There are some strong legal and practical arguments which can be made against requiring witnesses from the demanding state to appear. Although it is often not difficult to subpoena witnesses for trial in another state, there is no authority for compelling a witness to travel to an asylum state for testimony in an extradition proceeding. Since such an appearance involves substantial inconvenience to the witness, it is not uncommon for such a witness to resist. The problem could be compounded if the witness is a minor or has health problems. These considerations should be urged in an effort to be allowed to establish identity and/or fugitivity in other acceptable ways, e.g., through affidavits, photographs and fingerprints.

[preponderance of evidence].

143. *Smith v. Idaho* (9th Cir. 1967) 373 F.2d 149; *State ex rel. Lingerfelt v. Gardner* (Tenn. 1979) 591 S.W.2d 777; *People v. House* (Ill. App. 1978) 378 N.E.2d 331; *People v. Bentley* (1990) 555 N.Y.S.2d 528.

144. See *Comm. v. Valentin* (Pa. Super. 1996) 672 A.2d 338; *In re Jones* (Vt. 1995) 669 A.2d 1199.

145. *People v. Ryan* (Ill. App. 1985) 473 N.E.2d 561; cf. *Ex parte Smith* (Tex. App. 2001) 36 S.W.3d 927 [burden shifts to State when accused places identity in issue].

146. *McLeod v. Barrett* (Ga. 1999) 522 S.E.2d 219; *Smith v. Idaho* (9th Cir. 1967) 373 F.2d 149, 154; *Walden v. Mosley* (D.C. Miss. 1970) 312 F.Supp. 855, 859; *Mahan v. Greene* (Neb. 1982) 319 N.W.2d 760; *Clark v. Warden* (Md. App. 1978) 385 A.2d 816; *Hill v. Houck* (Iowa 1972) 195 N.W.2d 692; *Thurman v. State* (Iowa 1974) 223 N.W.2d 248; *People ex rel. Wohlford v. Warden* (1992) 584 N.Y.S.2d 809; *Robertson v. State* (Ind. 1992) 587 N.E.2d 117.

The prevailing rule is that formal rules of evidence do not apply in extradition proceedings because such proceedings occur at a very preliminary stage in the criminal process and are to be summary in nature.[147] As long as the evidence is cloaked with indicia of reliability, the rules of admissibility should be relaxed and the evidence construed liberally in favor of extradition.[148] In some states the rules of evidence specifically exempt their application in extradition proceedings.[149]

h. ***Bail***

As stated above, most states preclude bail or other conditional release following service of the governor's warrant, including during the pendency of habeas corpus proceedings, unless the court finds for the accused on any of the four issues discussed above. (See pp. 60-65, and fn. 108.)

i. ***Habeas corpus granted***

In many states, the state may appeal from an order granting a writ of habeas corpus. If it appears to the prosecutor that the writ was improvidently granted, he should consider seeking review in an appellate court. Because the appellate process is often very time consuming, the constitutional requirement of prompt return of fugitives from justice may not be met if a case must run the normal appellate course. Thus, it is usually advisable for the state to seek review by way of an extraordinary writ, rather than appeal. This method has been recognized as proper in extradition cases,[150] but its availability is subject to local practice within each state.

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147. 1 Wigmore, *Evidence*, section 4(6) (Tiller's rev. 1983); *Munsey v. Clough* (1905) 196 U.S. 364, 372; *United States ex rel. Vitiello v. Flood* (2d Cir. 1967) 374 F.2d 554, 558; *Ex Parte Shoels* (Tex. 1982) 643 S.W.2d 761; *Comm. v. Williams* (Pa. 1984) 470 A.2d 1001; *Dovel v. Adams* (Neb. 1981) 301 N.W.2d 102; *State ex rel. Jones v. Gann* (Tenn. 1979) 584 S.W.2d 235; *Reeves v. Cox* (N.H. 1978) 385 A.2d 847; *State v. Rosati* (R.I. 1991) 594 A.2d 885; *Robertson v. State* (Ind. 1992) 587 N.E.2d 117.

148. *McLaughlin v. State* (Tenn. 1974) 512 S.W.2d 657.

149. E.g., see Utah Rules of Evidence, rule 1101(b)(3).

150. *People v. Superior Court (Lopez)* (1982) 130 Cal.App.3d 776, 779-780.

As an alternative to an appeal or review by extraordinary writ, or if such are unsuccessful, a second attempt to extradite the accused may be initiated. A new application, requisition and supporting documents must be submitted with the previous defects corrected. The result of the prior unsuccessful attempt should be noted in the appropriate place on the application. Even where habeas corpus relief was granted on the basis of a factual issue (i.e., identity or fugitivity), a second arrest and attempt to extradite is permissible, because the principles of res judicata do not apply in extradition proceedings.[151] However, it is usually advisable to offer new and/or additional evidence on the issue if a second attempt is made.

9. ***Rendition of the Fugitive***

Once habeas corpus relief has been denied and no further stays are in effect, the law enforcement agency from the jurisdiction in the demanding state where the charges are pending should be contacted and requested to arrange for the fugitive to be transported back to the demanding state.

a. ***Time for agents to appear***

The UCEA provides no time limit within which agents of the demanding state must appear in the asylum state to take custody of the fugitive. The Federal Act (18 U.S.C. § 3182) provides that "[i]f no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged." The "arrest" refers to the service of the governor's rendition warrant. This provision is permissive, not mandatory.[152] In other words, after 30 days awaiting the arrival of the agent, the court has discretion to release the fugitive. By implication, then, until 30 days have passed, the fugitive must remain in custody. Any release prior to that time would appear to be in

151. *Boudreaux v. State* (Ut. App. 1999) 989 P.2d 1103; *Ex parte McClintock* (Tex. App. 1997) 945 S.W.2d 188; *Laverty v. State* (Alaska App. 1998) 963 P.2d 1076; *People ex rel. Schank v. Gerace* (1997) 661 N.Y.S.2d 403; *In re Russell* (1974) 12 Cal.3d 229; *State v. Wheaton* (Fla. 1987) 508 So.2d 492; *Garcia v. Cooper* (Colo. 1986) 711 P.2d 1255; *In re Moskaluk* (Vt. 1991) 591 A.2d 95; *Elliott v. Johnson* (Tenn.Cr.App. 1991) 816 S.W.2d 332; *Castriotta v. State* (Nev. 1995) 888 P.2d 927; *State v. Van Buskirk* (S.D. 1995) 527 N.W.2d 922; *Alabama v. Engler* (6th Cir. 1996) 85 F.3d 1205 [mandamus granted even though previous governors refused extradition].

152. See *People v. Superior Court (Lopez)* (1982) 130 Cal.App.3d 776, 786; *Long v. Cauthron* (Ark. App. 1987) 731 S.W.2d 792; *In re App. of Bembry* (Okla. Cr. 1995) 907 P.2d 1076.

violation of the federal law and an infringement of the demanding state's constitutional right to the return of its fugitive from justice. In reality, however, most jurisdictions "require" that agents arrive in a much shorter time. For example, the District of Columbia allows only 72 hours for agents to take custody of fugitives after the rendition is ordered.

b. ***Transfer of custody***

Unless the judge who committed the fugitive for extradition so orders, it is usually not necessary for the demanding state's agent to appear in court and take custody of the fugitive there. The transfer of custody can usually take place at the jail after the identity and authority of the demanding state's agent have been established to the satisfaction of the jailer.

NOTE: When a fugitive is a state prisoner with a substantial portion of his term remaining, a temporary transfer of custody for trial is usually accomplished under the Interstate Agreement on Detainers. (See Chapter III.) However, where another state seeks ***extradition*** of a state prisoner soon to be paroled, that state should begin the extradition process at least 90 days before the parole date. This will allow the asylum state governor to issue his rendition warrant to the warden well in advance of that date. When the warden receives the governor's warrant, prison officials should follow the procedures outlined at pages 55-69. Note that pre-governor's warrant procedures (identity hearing, fugitive complaint, etc.) are ***not*** required after the governor's warrant issues. If arraignment and any habeas corpus proceedings are completed by the parole date, the agents of the demanding state can receive custody of the fugitive directly from the warden; the local sheriff need not take custody first.

10. ***Consequences of Noncompliance With Proper Extradition Procedures***

a. ***Effect on demanding state's prosecution***

As set forth at page 39, legal defects in the process of returning a fugitive will not deprive the demanding state of jurisdiction or otherwise affect its ability to prosecute the defendant.

b. ***Civil liability***

Officials in the asylum state must realize that they cannot disregard the proper procedures in extradition cases with impunity. While such disregard may not provide the fugitive

a defense to the criminal charge, it could provide him a cause of action under the federal Civil Rights Act (42 U.S.C. § 1983) against the official(s) who violated the procedural requirements of the extradition law.[153/] It has been held, however, that such an action may not be commenced after the fugitive has returned to the demanding state[154/] and that, in any event, following a conviction an action (or at least an award of damages) would be barred because the conviction is conclusive proof that there was probable cause for the arrest and rendition.[155/]

An alleged violation of the Interstate Corrections Compact does not give rise to a § 1983 cause of action.[156/]

Possible defenses to civil rights actions include good faith on the part of the official(s) named,[157/] nonparticipation in the violation[158/] and immunity.[159/]

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153. *Batton v. Gomez* (4th Cir. 2003) 324 F.3d 288*; In re Lightfoot* (7th Cir. 2000) 217 F.3d 914 [prosecutor sanctioned for advising surrender of fugitive despite judicial stay]; *Buchanan v. City of Kenosha* (E.D.Wis. 2000) 90 F.Supp.2d 1008; *Gray* v. *Cuyahoga Co. Sheriff's Dept.* (6th Cir. 1998) 150 F.3d 579; *White v. Armontrout* (8th Cir. 1994) 29 F.3d 357 (no pre-transfer hearing); *Crumley v. Snead* (5th Cir. 1980) 620 F.2d 481 (denial of right to petition for habeas corpus relief); *Wirth v. Surles* (4th Cir. 1977) 562 F.2d 319 (fugitive transported directly to demanding state by police after apprehension in asylum state); *Draper v. Coombs* (9th Cir. 1986) 792 F.2d 915 (same); see also *Brown v. Nutsch* (8th Cir. 1980) 619 F.2d 758; *Sanders v. Conine* (10th Cir. 1974) 506 F.2d 530; *United States v. Pennsylvania State Police* (E.D.Pa. 1982) 548 F.Supp. 9. But see *Barton v. Norrod* (6th Cir. 1996) 106 F.3d 1289; *Giano v. Martino* (E.D.N.Y. 1987) 673 F. Supp. 92; *Ortega v. Kansas City* (10th Cir. 1989) 875 F.2d 1497.

154. *Siegel v. Edwards* (5th Cir. 1978) 566 F.2d 958; *Comm. v. Caffrey* (Pa. 1986) 508 A.2d 322; *Messa v. Rubin* (E.D. Pa. 1995) 897 F.Supp. 883).

155. *Shank v. Spruill* (5th Cir. 1969) 406 F.2d 756; see *Heck v. Humphrey* (1994) 512 U.S. 477; *Brown v. Nutsch* (8th Cir. 1980) 619 F.2d 758; *Long v. Shillinger* (10th Cir. 1991) 927 F.2d 525.

156. *Ghana v. Pearce* (9th Cir. 1998) 159 F.3d 1206.

157. *Street v. Cherba* (4th Cir. 1981) 662 F.2d 1037; *Taggart v. County of Macomb* (E.D. Mich. 1982) 587 F.Supp. 1080; *Francois v. United States* (E.D.N.Y. 1981) 528 F.Supp. 533; *Scull v. New Mexico* (10th Cir. 2000) 236 F.3d 588.

158. *McBride v. Soos* (7th Cir. 1982) 679 F.2d 1223; *Landry v. A-Able Bonding, Inc.* (5th Cir. 1996) 75 F.3d 200; *Scull v. New Mexico* (10th Cir. 2000) 236 F.3d 588.

159. *Barton v. Norrod* (6th Cir. 1996) 106 F.3d 1289; *Ross v. Meagan* (3rd Cir. 1981) 638 F.2d 646; *Hayes v. Mercer Co.* (N.J. 1987) 526 A.2d 737.

NOTE: While a violation of proper extradition procedures may give rise to a cause of action under 18 U.S.C. section 1983, extradition itself can only be challenged by habeas corpus, not by a section 1983 action.[160]

c. ***Criminal liability***

UCEA section 11 makes it a misdemeanor for any officer or other person to deliver a fugitive to the demanding state's agents pursuant to a governor's warrant without first having the fugitive brought before a magistrate, arraigned, provided counsel if requested, and advised of his right to seek habeas corpus relief. (See UCEA, § 10.)

G. FUGITIVE DISENTITLEMENT

A fugitive from the justice of a state is not entitled to call upon the courts of that state for relief. This doctrine may bar a criminal defendant who has fled from challenging his conviction or otherwise participating in a case against him.[161] It may also bar civil plaintiffs from prosecuting their cases.[162]

160. *Good v. Allain* (5th Cir. 1987) 823 F.2d 64; *Ex parte Lebron* (Tex. App. 1997) 937 S.W.2d 590.

161. *Ortega-Rodriguez v. United States* (1993) 507 U.S. 234; *Molinaro v. New Jersey* (1970) 396 U.S. 365; *State v. Troupe* (Mo. 1995) 891 S.W.2d 808; *State* v. *Lundahl* (Or. App. 1994) 882 P.2d 644; *People v. Box* (Ill. App. 1994) 633 N.E.2d 242; *Medina v. Medina* (N.C. App. 1994) 445 S.E.2d 61; *United States v. Nabepanha* (S.D. Fla. 2001) 200 F.R.D. 480.

162. *Messa v. Rubin* (E.D. Pa. 1995) 897 F.Supp. 883; *Doe* v. *Superior Court* (1990) 222 CA.3d 1406.

III. INTERSTATE AGREEMENT ON DETAINERS

A. INTRODUCTION

The Interstate Agreement on Detainers (IAD) is a compact entered into by virtually all states,[163] the District of Columbia and the United States,[164] and provides for the temporary transfer of prisoners who are wanted by other states for trial on criminal charges.[165]

1. *Purpose*

The purpose of the IAD is to encourage the expeditious and orderly disposition of outstanding criminal charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The rationale underlying this purpose is that charges outstanding against a prisoner, detainers based on such untried charges, and difficulties in securing speedy trials of persons already incarcerated in other jurisdictions, produce uncertainties, anxiety and apprehension which obstruct programs of prisoner treatment and rehabilitation.[166]

2. *Definitions*

a. ***Detainer*** refers to a request or notice filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking the institution either to hold the prisoner for the agency

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163. To date, only Louisiana and Mississippi have not become parties to the IAD. (*Birdwell v.* Skeen (Tx. 1993) 983 F.2d 1332; *Alexander v. Abbott* 2008 WL 2468088.) See Appendix K for statutory references.

164. The IAD applies to interjurisdictional transfers between the states and federal jurisdictions. (*United States v. Mauro* (1978) 436 U.S. 340; *People v. Reyes* (1979) 98 Cal.App.3d 524; *People v. Cella* (1981) 114 Cal.App.3d 905; *United States v. Roy* (D.C. Conn. 1984) 597 F.Supp. 1210.) The United States is a member of the IAD as both a sending and receiving state. (*U.S. v. Stoner* (9th Cir. 1986) 799 F.2d 1253; *U.S. v. Iwuamadi* (D.Neb. 1989) 716 F.Supp. 420.) However, federal prosecutors may still use the writ of habeas corpus ad prosequendum to gain temporary custody of a state prisoner.

165. IAD Article I; *Reed v. Farley* (1994) 512 U.S. 339; *Carchman v. Nash* (1985) 473 U.S. 716. The IAD does not apply to interjurisdictional transfers within the same prison system. (*Hunter v. Samples* (11th Cir. 1994) 15 F.3d 1011.)

166. *Carchman v. Nash* (1985) 473 U.S. 716; *State v. Fuller* (Minn.App. 1997) 560 N.W.2d 97; *Valentine v. Commonwealth* (Va.App. 1994) 443 S.E.2d 445; *U.S. v. Hall* (9th Cir. 1992) 974 F.2d 1201; *State v. Leisure* (Mo.App. 1992) 838 S.W.2d 49; *State v. Butler* (Fla. App. 1986) 496 So.2d 916.

or to notify the agency when release of the prisoner is imminent.[167]

b. ***Sending state*** is the state in which the prisoner is incarcerated and which sends him to the state where charges are pending for purposes of trial.

c. ***Receiving state*** is the state in which untried criminal charges are pending which receives temporary custody of a prisoner for purposes of trial.

d. ***Anti-shuttling*** refers to the provision of the IAD forbidding a second transfer of custody to the receiving state because trial was not held or completed during the first transfer.

B. PREREQUISITES TO APPLICATION OF IAD

1. *Must Be A Signatory State*

The IAD only applies to those jurisdictions which have adopted it.[168] In other jurisdictions (e.g., Louisiana and Mississippi), extradition with an executive agreement to return the prisoner after trial, or a writ of habeas corpus ad prosequendum, should be used.

2. *Detainer Must Be Lodged*

Before the provisions of the IAD apply, a detainer must have been lodged against a prisoner with the records personnel of the institution where he is incarcerated.[169] The detainer should be lodged by the prosecutor or law enforcement agency of the jurisdiction where the

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167. *Fex v. Michigan* (1993) 507 U.S. 43; *Carchman v. Nash* (1985) 473 U.S. 716; *Cuyler v. Adams* (1981) 449 U.S. 433; *United States v. Mauro* (1978) 436 U.S. 340; *Birdwell v. Skeen* (5th Cir. 1992) 983 F.2d 1332; *State v. Estes* (Ore. App. 1994) 883 P.2d 1335. Cf. *Comm. v. Boyd* (Pa. 1996) 679 A.2d 1284; *State v. Herrick* (Me. 1996) 686 A.2d 602; *State v. Roberson* (Wash. App. 1995) 897 P.2d 443 [Governor's warrant not a detainer]; *Theis v. State* (Nev. 2001) 30 P.3d 1140 [N.C.I.C. entry not a detainer].

168. *State v. Wade* (Nev. 1989) 772 P.2d 1291.

169. *Schneider v. Comm.* (Ky. App. 1999) 17 S.W.3d 530; *Comm. v. Boyd* (Pa. 1996) 679 A.2d 1284; *State v. Herrick* (Me. 1996) 686 A.2d 602; *State v. Morawe* (N.M. App. 1996) 927 P.2d 44; *Dillard* v. *State* (Mo. App. 1996) 931 S.W.2d 157; *Johnson v. State* (Tex. App. 1995) 900 S.W.2d 475; *State v. Stewart* (Mont. 1994) 881 P.2d 629; *United States v. Bamman* (4th Cir. 1984) 737 F.2d 413; *People v. Quintana* (Colo. 1984) 682 P.2d 1226; *State v. Reynolds* (Neb. 1984) 359 N.W.2d 93; *State v. Coffman* (Ore. 1982) 650 P.2d 144; *Gilbreath v. State* (Okla. 1982) 651 P.2d 699; *In re Brooks* (1987) 189 Cal.App.3d 866; *People v. Bolin* (Colo. 1986) 712 P.2d 1002; *People v. Rhoden* (1989) 216 Cal.App.3d 1242; *U.S. v. Donaldson* (7th Cir. 1992) 978 F.2d 381 [IAD ceases to apply when detainer withdrawn (charges dismissed)].

untried charges are pending. A detainer may not need to be a formal document. Some courts have held any written notice to prison authorities advising them of untried charges against the prisoner will suffice. Others have required that a "formal" detainer be lodged.[170]

NOTE: The law does not require officials where charges are pending to lodge a detainer.[171]

3. ***Serving Term of Imprisonment***

The IAD applies "[w]henever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state." It does not apply to prisoners who are awaiting trial or sentencing in the sending state.[172] Moreover, it ceases to apply once a sentenced prisoner is released.[173] By its very terms, the IAD would appear to be inapplicable to sentenced ***jail*** inmates, since a local jail is not usually considered a "penal or correctional institution of a state." Further, it is unlikely that the purposes and policies intended to be

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170. *State v. Estes* (Ore. App. 1994) 883 P.2d 1335; *People v. Paulus* (Mich. 1982) 320 N.W.2d 337; *Gilbreath v. State* (Okla. 1982) 651 P.2d 699. Cf. *State v. Williams* (Neb. 1997) 573 N.W.2d 106 [mere notice of pending charge is not a detainer]; *People v. Rhoden* (1989) 216 Cal.App.3d 1242; *In re Brooks* (1987) 189 Cal.App.3d 866 [require lodging of "formal detainer" before IAD applies]; *State v. Herrick* (Me. 1996) 686 A.2d 602; *People v. Gallego* (Mich. App. 1993) 502 N.W.2d 358 [L.E.I.N. (NCIC) hold is not a detainer under IAD]; *Theis v. State* (Nev. 2001) 30 P.3d 1140 [same].

171. *Russo v. Johnson* (S.D. Tex. 2001) 129 F.Supp.2d 1012; *State v. DeAngelis* (R.I. 1995) 658 A.2d 7; *State v. Leyua* (Ut. App. 1995) 906 P.2d 910; *People v. Rhoden* (1989) 216 Cal.App.3d 1242; *People v. Brooks* (1987) 189 Cal.App.3d 866; *U.S. v. King* (E.D. Va. 1995) 909 F.Supp. 369; *State v. Anderson* (Wash. 1993) 855 P.2d 671.

172. *State v. Fay* (Fla. App. 2000) 763 So.2d 473; *Comm. v. Tracy* (Mass. App. 2000) 737 N.E2d 930; *Bruce v. State* (Mo. App. 1999) 998 S.W.2d 91; *United States v. Taylor* (6th Cir. 1999) 173 F.3d 538; *State v. Herrick* (Me. 1996) 686 A.2d 602; *People v. Phillips* (Mich. App. 1996) 552 N.W.2d 487; *People v. Garner* (1990) 224 Cal.App.3d 1363; *People v. Zetsche* (1987) 188 Cal.App.3d 917; *United States v. Maldonado* (D.C. W. Va. 1985) 601 F.Supp. 502; *United States v. Wilson* (10th Cir. 1983) 719 F.2d 1491; *People v. Gabbidon* (N.Y. 1982) 455 N.Y.S.2d 244; *Comm. v. Alexander* (Pa. 1983) 464 A.2d 1376; *Crooker v. United States* (1st Cir. 1987) 814 F.2d 75; *State v. Watson* (Me. 1995) 657 A.2d 776 [IAD inapplicable to prisoner in jail awaiting parole revocation]; *United States v. Collins* (E.D.N.Y. 1994) 863 F.Supp. 102 [same]; *Smith* v. *Elo* (E.D. Mich. 1999) 61 F.Supp.2d 668 [IAD inapplicable to sentenced jail prisoner awaiting transfer to prison].

173. *Cunningham v. State* (Ark. 2000) 14 S.W.3d 869; *Pristavec v. State* (Del. 1985) 496 A.2d 1036; *State v. Butler* (Fla. App. 1986) 496 So.2d 916; *State v. Smith* (S.D. 1984) 353 N.W.2d 338; *State v. Julian* (Kan. 1988) 765 P.2d 1104; *State v. Dunlap* (N. Car. 1982) 290 S.E.2d 744; cf. *Giles v. State* (Tex. App. 1995) 908 S.W.2d 303; *Loane v. State* (Ark. App. 1984) 677 S.W.2d 864. See also *People v. Zetsche* (1987) 188 Cal.App.3d 917, 925-926, fn. 4; *State v. Bellino* (Me. 1989) 557 A.2d 963; *State v. Chapman* (Conn.App. 1989) 565 A.2d 259. To the contrary, see *Snyder v. Sumner* (9th Cir. 1992) 960 F.2d 1448; disagreed with by *Cunningham v. State* (Ark. 2000) 14 S.W. 3d 869..

served by the IAD are promoted by applying it to a person serving a relatively short term in a local jail. While there is authority on both sides, the prevailing opinion is that the IAD does not pertain to county jail inmates.[174] However, it has been held to apply to inmates of state juvenile institutions.[175]

4. ***Detainer Based on Untried Charge***

The IAD applies only where the detainer lodged against the prisoner is based upon an "***untried*** indictment, information or complaint." It does not apply when the detainer is for an alleged probation or parole violation.[176] Likewise, it does not apply with regard to a deportation detainer[177] or in cases where the prisoner had previously escaped from another state's prison and is wanted there just on the basis of the unsatisfied prison term.[178] The overwhelming weight of authority is that the IAD does not apply to prisoners who have already been tried but remain to be sentenced on the receiving state's charges.[179] The one case which held it applicable in such circumstances (see fn. 179) also recognized that the prisoner may not demand ***return*** to the state

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174. See *Brewer v. State* (Id. App. 1996) 913 P.2d 73; *State v. Breen* (Id. 1994) 882 P.2d 472; *Crooker v. United States* (1st Cir. 1987) 814 F.2d 75; *State v. Wade* (Nev. 1989) 772 P.2d 1291; *Dorsey v. State* (Ind. (1986) 490 N.E.2d 260. But see *People v. Zetsche* (1987) 188 Cal.App.3d 917; *Felix v. United States* (D.C. App. 1986) 508 A.2d 101; *Escalanti v. Superior Court* (Ariz. 1990) 799 P.2d 5; *State v. Lock* (Tenn. 1992) 839 S.W.2d 436; *State v. Wilson* (Wash.App. 1985) 704 P.2d 1217.

175. *Lara v. State* (Tex. App. 1995) 909 S.W.2d 615.

176. *Carchman v. Nash* (1985) 473 U.S. 716; *McDonald v. N.M. Parole Bd.* (10th Cir. 1991) 955 F.2d 631; *In re Shapiro* (1975) 14 Cal.3d 711, 714, fn. 2; *United States v. Roach* (9th Cir. 1984) 745 F.2d 1252; *Hopper v. United States Parole Comm.* (9th Cir. 1983) 702 F.2d 842; *State v. Smith* (Conn. App. 2000) 749 A.2d 67; *U.S. v. Carnes* (E.D. Mich. 1999) 41 F.Supp.2d 719; *State v. Sparks* (N.M. 1986) 716 P.2d 253; *Garcia v. Cooper* (Colo. 1986) 711 P.2d 1255; *Hefferman v. State* (Wy. 1992) 824 P.2d 1271.

177. *U.S. v. Gonzales-Mendoza* (9th Cir. 1993) 985 F.2d 1014; *Argiz v. U.S. Immigration* (7th Cir. 1983) 704 F.2d 384; *Cabrera-Delgado v. U.S.* (S.D.N.Y. 2000) 111 F.Supp.2d 415.

178. *People v. Superior Court (Lopez)* (1982) 130 Cal.App.3d 776; *In re Gilchrist* (1982) 134 Cal.App.3d 867; *United States v. Bottoms* (9th Cir. 1985) 755 F.2d 1349.

179. IAD inapplicable: (*People v. Peterson* (1999) 695 N.Y.S.2d 550; *Stephenson v. State* (Ala. App. 2000) 801 So.2d 34; *Moody v. Consentino* (Colo. 1993) 843 P.2d 1355; *People v. Nosek* (1997) 654 N.Y.S.2d 63; *State v. Leyua* (Utah App. 1995) 906 P.2d 910; *People v. Mahan* (1980) 111 Cal.App.3d 28; *People v. Castoe* (1978) 86 Cal.App.3d 484; *State v. Barnes* (Ohio App. 1984) 471 N.E.2d 514.) IAD applicable: (*Tinghitella v. California* (9th Cir. 1983) 718 F.2d 308; but see *State v. Barefield* (Wash. 1988) 756 P.2d 731; *U.S. v. Coffman* (Kan. 1990) 905 F.2d 330; *State v. Bates* (Iowa 2004) 689 N.W. 2d 479, 481 fn. 2 [*Tinghitella v. California* represents minority view].) Also note that state courts are not bound by intermediate federal appellate decisions. (*People v. Figueroa* (1992) 2 Cal.App.4th 1584.)

with the unsentenced conviction just for the purpose of sentencing. Rather, under Article III of the IAD, the prisoner makes a "request for final disposition" of the matter. This means that in states which provide for sentencing ***in absentia*** of defendants who have absconded or otherwise voluntarily removed themselves from the court's jurisdiction, all the prisoner is entitled to is ***prompt sentencing***, not return to the sentencing state for that purpose.

C. PROCEDURE[180]

The IAD provides procedures by which the prisoner may inform the jurisdiction which lodged the detainer against him of his whereabouts and request disposition of the underlying charges (Art. III) and also by which the prosecutor in the jurisdiction where the charges are pending may request temporary custody of the prisoner for the purpose of bringing him to trial (Art. IV).[181]

1. *Prisoner's Request (Art. III)*

a. *Duty of prisoner*

A prisoner who wishes to invoke the provisions of the IAD in order to dispose of another state's charges which are the basis of a detainer has the obligation to comply with the requirements of the IAD. Essentially, this simply entails advising the warden of his request for final disposition of the charges and signing the appropriate documents as prepared by the institutional staff.[182] The completed documents are sent to the prosecutor by the institution ***not*** by the prisoner. "Self-help" procedures, such as a letter directly from the inmate to the prosecutor, will not invoke the IAD.[183] Cases

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180 The NAEO has developed standardized forms to assist in the IAD process. (See Appendix L, IAD Standardized Forms.) The NAEO has adopted a resolution strongly recommending that those participating jurisdictions use the the NAEOs' standardized forms (See NAEO Resolution #44, Uniform Agreement on Detainers Forms.)

181. The lodging of a detainer does not ***require*** either the inmate or the prosecutor to seek disposition under the IAD. (*State v. Stewart* (Mont. 1994) 881 P.2d 629; *State v. Batungbacal* (Ha. 1996) 913 P.2d 49.)

182. *People v. Wilson* (1977) 69 Cal.App.3d 631; *U.S. v. Espinoza* (9th Cir. 1988) 841 F.2d 326; *People v. Bowman* (Mich. 1993) 502 N.W.2d 192; *Brooks v. State* (Md. 1993) 617 A.2d 1049; *Patterson v. State* (Ark. 1994) 885 S.W.2d 667; *Pinto v. Comm. of Correction* (Conn. App. 2001) 768 A.2d 456 [oral request insufficient].

183. *State v. Fay* (Fla. App. 2000) 763 So.2d 473; *Comm. v. Tracy* (Mass. App. 2000) 737 N.E.2d 930; *People v. Wilson* (1977) 69 Cal.App.3d 631; *People v. Martin* (Ut. 1988) 765 P.2d 854; *Comm. v. Lloyd* (Pa.

differ as to whether strict or merely substantial compliance with the IAD is required to trigger its protections.[184]

When the prisoner signs the request for disposition of charges and asks that it be forwarded to the prosecutor, he expressly waives extradition to the receiving state for the purpose of trial on the outstanding charges. (See Appendix L, Form II.) He also waives extradition ***back*** to the receiving state to serve any term of imprisonment imposed there, after his term in the sending state expires.

b. ***Duty of prison officials***

The prison officials have an important responsibility in seeing that the prisoner receives the protections intended under the IAD. First, they must notify the prisoner of the existence, location and nature of pending charges against him, and of his rights under the IAD with regard to those charges. (See Appendix L, Form I.)[185] Next, they must provide the appropriate forms to the prisoner for his signature if he desires to request disposition of the charges. They must then promptly forward the request, along with the warden's certificate of the inmate's status and offer of temporary custody, to the prosecutor and court in the receiving state. (See Appendix L, Forms II, III, IV.)[186] Also, they should notify all prosecutors in other jurisdictions within the receiving

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1988) 535 A.2d 1152; *Johnson v. People* (Colo. 1997) 939 P.2d 817; *State v. Powell* (Tex. App. 1998) 971 S.W.2d 577; *State v. Bernard* (Mo.App. 1984) 678 S.W.2d 448; *Eckard v. Comm.* (Va. App. 1995) 460 S.E.2d 242; *Hines v. State* (Md.App. 1984) 473 A.2d 1335; *State v. Bass* (Iowa 1982) 320 N.W.2d 824; *People v. Rhoden* (1989) 216 Cal.App.3d 1242; *Ellis v. Comm.* (Ky. 1992) 828 S.W.2d 360; *Fields v. U.S.* (D.C. App. 1997) 698 A.2d 485.

184. Substantial compliance: *U.S. v. Johnson* (9th Cir. 1999) 196 F.3d 1000; *People v. Wilson* (1977) 69 Cal.App.3d 631; *State v. Roberts* (Fla.App. 1983) 427 So.2d 787; *State v. Tarango* (N.M. App. 1987) 734 P.2d 1275. Strict compliance: *United States v. Smith* (D.Ore. 1988) 696 F.Supp. 1381; *State v. Wells* (Ohio App. 1996) 673 N.E.2d 1008; *State v. Roberson* (Wash. App. 1995) 897 P.2d 443; *Clater v. State* (Ga. 1996) 467 S.E.2d 537; *Palmer v. Williams* (N.M. 1995) 897 P.2d 1111; *Jamison v. State* (Mo. App. 1996) 918 S.W.2d 889; *State v. Somerlot* (W.Va. 2000) 544 S.E.2d 52; *Lindley v. State* (Tex. App. 2000) 33 S.W.3d 926; *State v. Blackburn* (Wisc. App. 1997) 571 N.W.2d 695; *State v. Moe* (N.D. 1998) 581 N.W. 2d 468.

185. *People v. Bentley* (Mich. 1982) 328 N.W.2d 389; *Dotson v. State* (Ind. 1984) 463 N.E.2d 266.

186. *State v. Wells* (N.J. 1982) 453 A.2d 236; *People v. Wilson* (1977) 69 Cal.App.3d 631; *Fex v. Michigan* (1993) 507 U.S. 43; *State* v. *Wells* (Ohio App. 1997) 673 N.E.2d 1008.

state with detainers lodged that the inmate has requested disposition. (Art. III, par. (d).)

c. ***Duty of prosecutor***

The prosecutor in the jurisdiction where the charges are pending bears a great responsibility to see that the requirements of the IAD are met in order to facilitate the temporary transfer of the prisoner and to assure that the prisoner receives the protections contemplated by the IAD. The prosecutor also has the strongest interest in seeing that there is full compliance on his part ***and*** on the part of the prison officials. Some older cases have held that the consequences of the prison officials' noncompliance are visited upon the prosecutor, requiring dismissal under some circumstances.[187/] However, the U.S. Supreme Court and most other courts have more recently held that a prosecutor who is not responsible for a violation of the IAD will not incur a dismissal when others have caused the violation.[188/]

After receiving the request for disposition of charges, certificate of the inmate's status and offer of temporary custody, the prosecutor should immediately return to the institution his acceptance of the offer of temporary custody and forward the written authorization of an agent to act for the receiving state to the receiving state's Agreement Administrator. (See Appendix L, Forms VI and VII.) When notified that all necessary procedures have concluded in the sending state, the prosecutor should send the authorized

187. *People v. Wilson* (1977) 69 Cal.App.3d 631; see also, *State v. Braswell* (Conn. 1984) 481 A.2d 413.

188. *Fex v. Michigan* (1993) 507 U.S. 43; *State v. Burks* (Minn. App. 2001) 631 N.W.2d 411; *State* v. *Somerlot* (W.Va. 2000) 544 S.E.2d 52; *Lindley v. State* (Tex. App. 2000) 33 S.W.3d 926; *State v. Morris* (Wash. 1995) 892 P.2d 734; *State v. Nearhood* (Neb. App. 1994) 518 N.W.2d 165; *State v. Estes* (Ore. App. 1994) 883 P.2d 1335; *Comm. v. Gonce* (Pa. 1983) 466 A.2d 1039; *Shumate v. State* (Fla. App. 1984) 449 So.2d 387. But see, *U.S. v. Johnson* (9th Cir. 1999) 196 F.3d 1000 [sending request to U.S. Marshall served as notice to U.S. Atty.]. Also, it should be noted that, despite noncompliance with the requirements of the IAD, when a prisoner makes a demand for a speedy trial upon the prosecutor, the latter is obliged to make a diligent, good-faith effort to bring the prisoner to trial as soon as possible. (*Smith v. Hooey* (1969) 393 U.S. 374; *State v. Simon* (Wash.App. 1996) 928 P.2d 449; see also *State v. DeAngelis* (R.I. 1995) 658 A.2d 7; *Gilmore v. State* (Ind. 1995) 655 N.E.2d 1225.) Other constitutional and statutory speedy trial provisions are separate and distinct from the IAD. (*Reed v. Farley* (1994) 512 U.S. 339; *Bentley v. Scully* (S.D.N.Y. 1994) 851 F.Supp. 586; *Patterson v. State* (Ark. 1994) 885 S.W.2d 667; *State v. Vaughn* (Kan. 1993) 865 P.2d 207; *State v. Anderson* (Wash. 1993) 855 P.2d 671.)

agent(s) to that state to take custody of the prisoner. ***The prisoner must be brought to trial within 180 days of the time the prosecutor and court received the prisoner's request for disposition and accompanying documents***. Following the conclusion of the proceedings, including sentencing or other disposition, the prosecutor should notify the institution and Agreement Administrator of the disposition and arrange for the prisoner's return. (See Appendix L, Form IX.)

2. ***Prosecutor's Request (Art. IV)***

a. ***Duty of prosecutor***

Under Article IV of the IAD, the prosecutor in the jurisdiction where untried charges are pending may request temporary custody of an out-of-state prisoner for purposes of trial on those charges. Before making the request, the prosecutor should confirm that his detainer has been lodged by the institution and that the prisoner has been notified of the detainer and the charges upon which it is based. To initiate the request, the prosecutor should prepare a request for temporary custody. (Appendix L, Form V.) Attached to the request should be certified copies of the complaint, information or indictment, the arrest warrant and identification documents such as physical description, photographs and fingerprint cards. The request must be signed by the prosecutor and certified by a judge in the jurisdiction where the charges are pending. Copies should be sent to the prisoner, the institution and the Agreement Administrator of the sending state (where the prisoner is incarcerated). The prosecutor and local judge should also retain a copy.

After receiving the warden's offer of temporary custody, the prosecutor should prepare and request the agent's authority as set forth above. (Appendix L, Forms IV, VI.) Once the prisoner is brought to the receiving state, ***he must be brought to trial within 120 days of his arrival***. Following sentencing, the prosecutor should notify the institution and Agreement Administrator of the disposition. (Appendix L, Form IX.)

b. ***Duty of prison officials***

The prison officials should notify the prisoner as soon as a detainer based on untried charges is lodged against him and

advise him of his right to request disposition. (Appendix L, Forms I, II.). Upon receipt of the prosecutor's request for temporary custody, the prison officials should prepare a certificate of the inmate's status and forward it to the prosecutor. (Appendix L, Form III.) After waiting 30 days to allow the Governor to intervene, the officials should offer temporary custody of the prisoner following a pretransfer hearing. (Appendix L, Form IV.)[189/]

c. ***Pretransfer hearing***

Because a transfer under Article IV of the IAD is an involuntary removal, the United States Supreme Court has held that the prisoner is entitled to the same procedural due process protections that he would have if he were extradited under the UCEA, except that he may not insist on the issuance of a governor's warrant. Essentially, this entitles the prisoner to a pretransfer hearing similar to the arraignment which would be held under UCEA section 10.[190/] In most counties where state correctional institutions are located, the prosecuting attorney's office is notified of the need for a pretransfer IAD hearing; these are frequently conducted in conjunction with extradition hearings, which are similar in nature. However, the appropriate documents are furnished by the correctional institution, rather than by the local law enforcement agency. At the hearing counsel should be appointed and the judge should inform the prisoner of the request for temporary custody, the crime with which he is charged and determine the prisoner's identity as the person charged. The prosecuting attorney represents the interests of the receiving state.

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189. Even after receiving a prosecutor's request for temporary custody, it may be desirable for prison officials to again offer the prisoner the opportunity to request disposition by signing a Form II. This would eliminate the need for a pretransfer hearing and is a double waiver of extradition. If the prisoner does so, the prosecutor should immediately be advised and the request should be processed pursuant to Article III. (See Note, p. 82.)

190. See *Cuyler v. Adams* (1981) 449 U.S. 433. However, where the person sought is a federal prisoner, he is not entitled to a pretransfer hearing. (*Comm. v. Carter* (Pa. 1984) 478 A.2d 1286; *Wilkett v. State* (Ok. 1988) 753 P.2d 383; *Sorenson v. United States* (S.D.N.Y. 1982) 539 F.Supp. 865.) Similarly, prisoners in other non-UCEA jurisdictions (e.g., Mississippi, North Dakota and South Carolina) would presumably not be entitled to such a hearing.

d. ***Defenses to transfer***

Prisoners whose temporary custody is sought under Article IV of the IAD may challenge their transfer by way of habeas corpus. The issues which may be raised on habeas corpus are (1) identity, (2) whether the prisoner is charged in the receiving state, and (3) whether the papers are in order.[191] Essentially, the same presumption of regularity, burdens of proof and rules of evidence apply in these proceedings as in extradition habeas corpus cases.[192]

After all court proceedings have concluded, and at least 30 days have passed from the receipt of the request, the warden should offer temporary custody to the prosecutor. (Appendix L, Forms III, IV.)

e. ***Governor's role***

The IAD was intended to provide an administrative substitute for formal extradition proceedings so as to facilitate the prompt disposition of pending criminal charges against prisoners. Thus, the IAD expressly eliminates the requirement that the Governor issue a rendition warrant to accomplish a transfer. (Art. IV, subd. (d).)[193] The IAD does provide that the prison officials must wait 30 days after receiving a request for temporary custody before acting upon it to allow the sending state's Governor to disapprove the request. However, the provision does not require a review of every case by the Governor's office similar to what occurs in extradition cases.[194] Also, the Governor is not required to affirmatively

191. *Statchuk v. Warden* (Md.App. 1983) 455 A.2d 1000; *Blakey v. Dist. Ct.* (Mont. 1988) 755 P.2d 1380. "Fugitivity" is not a required element under the IAD, as it is under the extradition law. (18 U.S.C. § 3182; UCEA § 3.) Therefore, this is not an issue which can be raised to defeat a transfer under Article IV of the IAD. (*Coulter v. State* (Ala.App. 1992) 611 So.2d 1129; but see *Blakey v. Dist. Ct.* (Mont. 1988) 755 P.2d 1380.)

192. See *Statchuk v. Warden* (Md.App. 1983) 455 A.2d 1000.

193. See *In re App. of Morris* (W.D. No. Car. 1983) 563 F.Supp. 1289. Nevada requires that before its state prison will honor a request for temporary custody from a prosecutor from another state, the request be approved by the Governor of the requesting (receiving) state. (*Housewright v. Lefrak* (Nev. 1983) 669 P.2d 711; *Director v. Blum* (Nev. 1982) 639 P.2d 559; see also *Hudson v. Moran* (9th Cir. 1985) 760 F.2d 1027.) Whenever an Agreement Administrator processes a request to Nevada, he should add, "under authorization from the Governor," the executive approval required by Nevada.

194. *State ex rel. Young v. Rose* (Tenn. 1984) 670 S.W.2d 238.

act within the 30 days. Once it has elapsed without the Governor's disapproval of the request, the prisoner may be transferred.[195]

NOTE: It is not clear whether a prisoner can deliver a request for disposition (Form II) under Article III of the IAD ***after*** a prosecutor has already initiated a request for temporary custody under Article IV. Some argue that once the IAD procedures have been initiated, under either Article III or Article IV, it cannot thereafter be "converted" by either the prisoner or the prosecutor.[196] However, it is questionable whether a prosecutor can foreclose a prisoner's protections under Article III by sending a request under Article IV which may not be acted upon for a long period of time. Further, there are definite ***advantages*** to the prison authorities and prosecutor when the prisoner submits a Form II, such as a "double" extradition waiver (see pp. 77, 86-87) and no pretransfer court hearing. (See fn. 190, p. 80.) Despite this uncertainty, some states allow an Article IV request to be converted into an Article III request. (See Appendix L-1.)

3. ***Trial After Transfer***

The purpose of a temporary transfer of custody under the IAD is to dispose of outstanding criminal charges. The prisoner should remain in the receiving state until the trial proceedings, including sentencing, are concluded. However, he should not remain during the pendency of any appeal from his conviction.

a. ***Time for trial***

1) ***Article III transfers***

Where the transfer of custody was at the request of the prisoner under Article III, he must be brought to trial within 180 days of the day the ***prosecutor and the court receive*** the appropriate documents.[197] This

195. When the United States is the sending "state", the 30-day waiting period may still apply; if so the Attorney General is the executive authority who must deny the request. (*Lopez v. Levi* (S.D.N.Y. 1976) 422 F.Supp. 846.)

196. See *State v. Willoughby* (Ha. App. 1996) 927 P.2d 1379; *Shewan v. State* (Fla. App. 1980) 396 So.2d 1133.

197. *Fex v. Michigan* (1993) 507 U.S. 43; *State v. NMN Wells* (Minn. App. 2002) 638 N.W.2d 456 [delivered to wrong prosecutor]; *McNelton v. State* (Nev. 1999) 990 P.2d 1263; *State* v. *Treece* (N.C. App. 1998) 497 S.E.2d 124; *Wright v. Comm.* (Ky. App. 1997) 953 S.W.2d 611; *Comm. v. Boyd* (Pa. 1996) 679 A.2d 1284; *State v. Rodriguez* (Kan. 1996) 927 P.2d 463; *Jamison v. State* (Mo. App. 1996) 918 S.W.2d 889 [actual knowledge not a substitute for proper notice]; *Birdwell v. Skeen* (5th Cir. 1992) 983 F.2d 1332; *State v. Walton* (Mo. 1987) 734 S.W.2d 502; *Henager v. State* (Ok. 1986) 716 P.2d 669; *State v. Soule* (Neb. 1986) 379 N.W.2d 762. See also *State v. Braswell* (Conn. 1984) 481 A.2d 413; *U.S. v. Dawn* (7th Cir. 1990) 900 F.2d 1132; *U.S. v.*

requirement is not satisfied if only the preliminary examination occurs within the time limit; the trial itself must commence.[198/] Also, the prosecutor cannot avoid the IAD time constraints by dismissing the case and refiling the same charges.[199/] However, the state can amend or add charges after the request for disposition is made, and new charges are not subject to the IAD.[200/]

2) ***Article IV transfers***

Where the transfer of custody was at the request of the prosecutor under Article IV, the prisoner must be brought to trial within 120 days from his ***arrival in the receiving state***.[201/]

NOTE: A question arises as to which time limitation applies where a prisoner has submitted a Form II ***after*** the prosecutor has initiated the IAD procedures under Article IV. (See **NOTE**, p. 82.) It has been held that the time limitation is controlled by which party first initiated the IAD procedures.[202/]

b. ***Tolling of time period***

The time period within which trial must commence under either Article III or Article IV of the IAD may be tolled under certain circumstances. For example, both articles provide that the time for trial may be extended if, for good cause shown, the

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Espinoza (9th Cir. 1988) 841 F.2d 326; *Comm. v. Martens* (Mass. 1986) 500 N.E.2d 282.

198. *State ex rel. Kemp v. Hodge* (Mo. 1982) 629 S.W.2d 353; *People v. Jones* (Mich.App. 1992) 482 N.W.2d 207.

199. See *People v. Christensen* (Ill. 1984) 465 N.E.2d 93; *People v. C'Allah* (N.Y. 1984) 474 N.Y.S.2d 305; *State v. Shaw* (N.M. 1982) 651 P.2d 115. However, where multiple counts are severed for trial, it is required that only the first trial commence within the time limit. (See *Dobson v. United States* (D.C. 1982) 449 A.2d 1082.) Also, if a mistrial occurs during the first trial, a new period under the IAD begins for purposes of the retrial. (See *State v. Green* (Tenn. App. 1984) 680 S.W.2d 474.)

200. *State v. Robbins* (Kan. 2001) 32 P.3d 171; *People v. Oiknine* (1999) 79 Cal.App.4th 21; *People v. Garcia* (Colo. App. 2000) 17 P.3d 820.

201. *Sweeney v. State* (Ind. 1998) 704 N.E.2d 86; *People v. Zetsche* (1987) 188 Cal.App.3d 917; *People v. Meyers* (Mich. App. 1981) 311 N.W.2d 454; *O'Connell v. State* (Fla. App. 1981) 400 So.2d 136; *State v. Stilling II* (Ut. 1989) 770 P.2d 137.

202. *State v. Willoughby* (Ha. App. 1996) 927 P.2d 1379; *Shewan v. State* (Fla. App. 1980) 396 So.2d 1133. But see *Ullery v. State* (Ok. App. 1999) 988 P.2d 332 [earliest period to expire applies].

trial court grants a continuance.[203] "Good cause" has been found for reasons such as the unavailability of the trial judge,[204] higher priority for another trial[205] and pretrial motions by or for the benefit of the defendant and/or his counsel.[206] A motion for continuance must be made in open court in the presence of the defendant and/or his counsel.[207] Also, the period is tolled during any time that the defendant is "unable to stand trial."[208]

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203. *King v. Brown* (9th Cir. 1993) 8 F.3d 1403; *Elliotte v. State* (Del. Supr. 1986) 515 A.2d 677; *People v. Posten* (1980) 108 Cal.App.3d 633, 641; *Dillon v. State* (Tenn. 1992) 844 S.W.2d 139; *State v. Rose* (Me. 1992) 604 A.2d 24; *Ricks v. State* (Ga.App. 1992) 419 S.E.2d 517; *Petrick v. State* (Tex.App. 1992) 832 S.W.2d 767; *Kenneth-Smith v. State* (Mo.App. 1992) 838 S.W.2d 113; *State v. Livernois* (N.M. 1997) 934 P.2d 1057; *State v. Clifton* (R.I. 2001) 777 A.2d 1272.

204. *People v. Watson* (Colo. 1982) 650 P.2d 1340; *State v. Aaron* (N.M. 1984) 692 P.2d 1336.

205. *State v. Rodriguez* (Kan. 1996) 927 P.2d 463; *Comm. v. Dickson* (Mass. 1982) 434 N.E.2d 1284; cf. *State v. Gipson* (Tenn. 1984) 670 S.W.2d 637; *Comm. v. Petrozziello* (Mass. App. 1986) 491 N.E.2d 627.

206. *U.S. v. Diaz* (2nd Cir. 1999) 176 F.3d 52; *Comm. v. Montione* (Pa. 1998) 720 A.2d 738; *People* v. *Williams* (2000) 720 N.Y.S.2d 653; *State v. Sprague* (N.H. 2001) 771 A.2d 583; *State v. Powell* (Tex App. 1998) 971 S.W.2d 577; *People v. Ortiz* (Ill. App. 2000) 731 N.E.2d 937; *State v. Miller* (N.J. 1997) 691 A.2d 377; *People v. Reid* (1995) 627 N.Y.S.2d 234; *State v. Moore* (Mo. App. 1994) 882 S.W.2d 253; *State v. Johnson* (Wisc. App. 1994) 526 N.W.2d 279; *State v. Batungbacal* (Ha. 1996) 913 P.2d 49; *People v. Posten* (1980) 108 Cal.App.3d 633, 641; *Comm. v. Diggs* (Pa. 1984) 482 A.2d 1329; *State v. Brown* (N.H. 1984) 480 A.2d 901; *State v. Shaw* (N.M. 1982) 651 P.2d 115; *People v. Paulus* (Mich. 1982) 320 N.W.2d 337; cf. *State v. Soule* (Neb. 1986) 379 N.W.2d 762; *State v. Grant* (Mont. 1987) 738 P.2d 106; *United States v. Nesbitt* (7th Cir. 1988) 852 F.2d 1502; *State v. Rose* (Me. 1992) 604 A.2d 24; *State v. Shatney* (R.I. 1990) 572 A.2d 872; *Comm. v. Corbin* (Mass. 1988) 519 N.E.2d 1367; *U.S. v. Johnson* (9th Cir. 1992) 953 F.2d 1167. But cf. *Gallimore* v. *State* (Okla. App. 1997) 944 P.2d 939; *State v. Willoughby* (Ha. App. 1996) 927 P.2d 1379.

207. *U.S. v. Crozier* (6th Cir. 2001) 259 F.3d 503; *Holloman v. State* (Tex. App. 1984) 675 S.W.2d 351; *Dillon v. State* (Tenn. 1992) 844 S.W.2d 139.

208. *State* v. *Cook* (Pa. 2000) 750 A.2d 91 [charges pending in sending state]; *Johnson* v. *Commissioner* (Conn. App. 2000) 758 A.2d 442 [defendant on trial in sending state]; *State v. Miller* (N.J. 1997) 691 A.2d 377 [defendant on trial in another case]; *Vaden* v. *State* (Ind. App. 1999) 712 N.E.2d 522 [same]; *State v. Rodriguez* (Kan. 1996) 927 P.2d 463 [same]; *Comm. v. Woods* (Pa. 1995) 663 A.2d 803 [defendant "in transit" in federal prison system]; *Patterson v. State* (Ark. 1994) 885 S.W.2d 667 [on trial in another case]; *State ex rel. Tryon v. Mason* (Mo. 1984) 679 S.W.2d 268 [defendant subject to "call back" in sending state]; *People v. Posten* (1980) 108 Cal.App.3d 633 [People's appeal of dismissal pending]; *People v. Lambert* (N.Y. 1983) 459 N.Y.S.2d 120 [defense attorney had conflicting trial]; *State v. Minnick* (Fla. 1982) 413 So.2d 168 [defendant in another receiving state for trial]; *Comm. v. Petrozziello* (Mass. App. 1986) 491 N.E.2d 627; *People v. Vrlaku* (N.Y. 1988) 533 N.E.2d 1053.

c. ***Trial by sister county***

A prisoner who seeks a transfer under Article III is deemed to be requesting disposition of ***all*** charges in the prosecuting state ***on which detainers have been lodged***. (See Art. III, subd. (d).) Indeed, the warden must notify all jurisdictions in the receiving state which lodged detainers of a prisoner's request for disposition of any of the charges. (*Id.*) Failure to bring the prisoner to trial on charges of a sister county which also lodged a detainer before his return will result in dismissal of those charges.[209/] Likewise, the IAD appears to permit prosecution by a sister county which lodged a detainer following an Article IV transfer.[210/]

However, Article V, subdivision (d), seems to preclude trial in a sister county which has not lodged a detainer.[211/] A contrary argument could be made on two bases. First, despite an apparent violation of this provision of the IAD, the sister county would not be without jurisdiction to prosecute the prisoner.[212/] The general rule is that the manner by which an accused is brought before the court has no bearing on the jurisdiction of the court in a criminal proceeding.[213/] The IAD itself provides no remedy for a violation of this provision.

Second, the purposes of the IAD as set forth previously in this chapter would seem to be consistent with a trial in the sister county, even though no detainer had been previously lodged, rather than returning the inmate to prison, then transferring him again for trial in the sister county. Both practical and

209. See *State v. Wiggins* (Fla. App. 1983) 425 So.2d 621.

210. See *Selph v. Buckallew* (Colo. 1991) 805 P.2d 1106 [***new*** charges filed after defendant in receiving state not affected by IAD]; see also fn. 200, p. 93.

211. Subdivision (d) of Article V states, in part: "The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction."

212. See *Brown v. District Court* (Colo. 1977) 571 P.2d 1091.

213. See *Frisbie v. Collins* (1952) 342 U.S. 519.

policy considerations militate in favor of trial in the sister county before return.[214]

NOTE: Alternatively, a sister county in the receiving state which had not previously lodged a detainer with the institution could do so while the prisoner is undergoing trial in the first county. A subsequent prosecution could then go forward under the provisions mentioned above.

d. ***Anti-shuttling***

Articles III and IV both contain "anti-shuttling" provisions. Essentially identical, they provide:

> "If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice."[215]

The U.S. Supreme Court has held that even a "de minimis" (slight or trifling) violation of the anti-shuttling provision requires dismissal.[216]

Therefore, a strict interpretation of the anti-shuttling provision applies.

The anti-shuttling clause may not be invoked to allow an inmate to dictate in what order he will serve multiple sentences.[217]

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214. See *Comm. v. Boyd* (Pa. 1996) 679 A.2d 1284. However, prosecutors or other officials should be wary of violating a statute to the "detriment" of a prisoner. While the violation may not provide a defense to the criminal action, it could possibly create a civil cause of action. (See, e.g., *Ricks v. Sumner* (9th Cir. 1981) 647 F.2d 76; *Bush v. Muncy* (4th Cir. 1981) 659 F.2d 402.)

215. Article III, subdivision (d), and Article IV, subdivision (e).

216. *Alabama v. Bozeman* (2001) 533 U.S. 146 [federal prisoner transferred a short distance to state custody for arraignment, returned to federal prison the next day; second transfer to state custody for trial violated IAD]. See also *Marshall* v. *Superior Court* (1986) 183 C.A.3d 662; *State v. Sephus* (Tex. App. 2000) 32 S.W.3d 369.

217. *Pitsonbarger v. Gramley* (7th Cir. 1998) 141 F.3d 728; *New York v. Poe* (E.D. Okla. 1993) 835 F.Supp. 585 [no standing]; *State v. Thornton* (Ariz. 1996) 929 P.2d 676; see also *Dunn v. Keohane* (7th Cir.

4. *Return to Receiving State to Serve Sentence*

Following his trial in the receiving state, the prisoner is to be returned to the sending state "at the earliest practicable time." (Art. V, par. (e).) After completing his term of imprisonment in the sending state, if the prisoner has an unfinished sentence in the receiving state ***he should be extradited*** to that state to complete that sentence if the transfer was under Article IV. However, if the IAD transfer was at the ***prisoner's*** request, under Article III, paragraph (e), he has waived extradition back to the receiving state to serve his sentence by signing the Form II. (See p. 77.)

D. REMEDIES FOR VIOLATIONS OF IAD

1. *Dismissal*

The IAD provides specifically for the remedy of dismissal for only two types of violations: (a) failure to bring the prisoner to trial within the applicable time period (Art. V, par. (c)[218]); and (b) failure to bring the prisoner to trial before his return to the sending state (Art. III, par. (d); Art. IV, par. (e)). There is no remedy provided for other types of violations.[219] Dismissal must be ordered by the court of the receiving state, since the sending state has no jurisdiction over the pending charges.[220] The sending state's courts may, however, quash the detainers based upon those charges if they determine a violation has occurred.[221] Even after a detainer is quashed, however, the receiving state may seek extradition when the prisoner is released.[222]

1994) 14 F.3d 335.

218. *Comm. v. Davis* (Pa. 2001) 786 A.2d 173; *Pinto v. Comm. of Correction* (Conn. App. 2001) 768 A.2d 456; *People v. Brooks* (1987) 189 Cal.App.3d 866; *United States v. Smith* (D. Ore. 1988) 696 F.Supp. 1381; *State v. Olsen* (N.D. 1995) 540 N.W.2d 149.

219. See *U.S. v. Walker* (8th Cir. 2001) 255 F.3d 540.

220. *Freeman v. Hand* (Ore. App. 1999) 974 P.2d 788; *In re Fabricant* (1981) 118 Cal.App.3d 115; *State ex rel. Bursaw v. Omodt* (Minn. 1983) 338 N.W.2d 585; *Remick v. Lopes* (Conn. 1987) 525 A.2d 502; *Comm. v. Clutter* (Pa. 1992) 615 A.2d 362; *Dodson v. Cooper* (Colo. 1985) 705 P.2d 500; *Walker v. McCormick* (Mont. 1993) 858 P.2d 373.

221. *People v. Jellicks* (N.Y. 1982) 455 N.Y.S.2d 327; *People ex rel. Albuquerque v. Ward* (N.Y. 1982) 455 N.Y.S.2d 1002; *Remick v. Lopes* (Conn. 1987) 525 A.2d 502; *Hickey v. State* (IowaApp. 1984) 349 N.W.2d 772.

222. *People ex rel. Kinkade v. Finnerty* (1985) 490 N.Y.S.2d 420; *Dunn v. Hindman* (Kan.App. 1993) 855 P.2d 994.

Under the strict interpretation given by the Supreme Court, the prisoner need not show prejudice to be entitled to a dismissal.[223] However, dismissal of state charges for violation of the IAD does not preclude federal prosecution for the same conduct.[224]

2. ***Inconsequential Violations***

Generally, violations of the IAD for which no remedy is provided by the agreement itself will not affect the prosecution of the pending charges, at least in the absence of prejudice to the prisoner.[225] For example, the failure of the sending state to provide the prisoner with a pretransfer hearing will have no effect on the criminal prosecution.[226] Also, overnight housing of the prisoner in a local county jail while undergoing a federal trial, while a technical violation, is a "trifling and insignificant" one, not requiring dismissal.[227] Likewise, beginning the prisoner's trial on the 181st day after his request was received by the prosecutor was held not an "abuse of discretion."[228]

3. ***Civil Liability***

As noted above, even where no remedy is provided as against the criminal charges, a violation of the IAD may result in possible civil liability on the part of the responsible official(s).[229]

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223. *Alabama v. Bozeman* (2001) 533 U.S. 146; see also *Gallimore v. State* (Okla. App. 1997) 944 P.2d 939; *State v. Sephus* (Tex. App. 2000) 32 S.W.3d 369.

224. *U.S. v. Boone* (11th Cir. 1992) 959 F.2d 1550.

225. See *People v. Zetsche* (1987) 188 Cal.App.3d 917; *Comm. v. Grant* (Mass. 1994) 634 N.E.2d 565; *Cooney v. Fulcomer* (3rd Cir. 1989) 886 F.2d 41; *Parker v. U.S.* (D.C.App. 1991) 590 A.2d 504; *Wilkett v. State* (Ok. 1988) 753 P.2d 383; *U.S. v. Wison* (D.Nev. 1990) 737 F.Supp. 599.

226. *State v. Moss* (W. Va. 1988) 376 S.E.2d 569; *United States v. Fulford* (3rd Cir. 1987) 825 F.2d 3; *State v. Brown* (Wis. 1984) 348 N.W.2d 593; *Watson v. Dupnik* (Ariz. App. 1981) 626 P.2d 622; *Johnson v. Warden* (Conn. 1991) 591 A.2d 407; *Shack v. A.G. of Pa.* (3rd Cir. 1985) 776 F.2d 1170.

227. *United States v. Roy* (D.C. Conn. 1984) 597 F.Supp. 1210; *U.S. v. Johnson* (9th Cir. 1992) 953 F.2d 1167. See *United States v. Taylor* (6th Cir. 1999) 173 F.3d 538.

228. *State v. Green* (Tenn. App. 1984) 680 S.W.2d 474.

229. *Ricks v. Sumner* (9th Cir. 1981) 647 F.2d 76; *Crenshaw v. Checchia* (E.D. Pa. 1987) 668 F.Supp. 443. Cf. *Chapman v. Guessford* (D. Del. 1996) 924 F.Supp. 30.

E. PROTECTIONS OF IAD UNAVAILABLE

1. *State Not A Party*

For its provisions to apply, the sending state and the receiving state must have adopted the IAD.[230] (As previously noted, Mississippi and Louisiana are not parties to the IAD.)

2. *Waiver By Defendant's Actions*

The prisoner may waive his protections under the IAD by his conduct in the receiving state. It is generally the case that a plea of guilty to the charges in the receiving state waives any violation of the IAD.[231] The contrary may be true if the issue is specifically preserved at the time of the plea.[232] Similarly, if the defendant requests treatment which would be in violation of the IAD, he may waive its protections.[233] Such a waiver need only be voluntary, not "knowing and intelligent."[234] In fact, the mere failure to object in the trial court

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230. *State v. McCabe* (La. 1982) 420 So.2d 955; *State v. Lee* (Mo. 1982) 626 S.W.2d 252; *Maggard v. Wainwright* (Fla. App. 1982) 411 So.2d 200; *United States v. Dixon* (6th Cir. 1979) 592 F.2d 329; *Robinson v. United States* (5th Cir. 1978) 580 F.2d 783; see also *People v. Messer* (1969) 276 Cal.App.2d 300; *Gillard v. State* (Ala. App. 1986) 486 So.2d 1323; *Yellen v. Cooper* (10th Cir. 1987) 828 F.2d 1471.

231. *Eaton v. State* (N.D. 2001) 626 N.W.2d 676; *State v. Norton* (Mo. App. 1999) 7 S.W.3d 459; *Ex parte Sanchez* (Tex. App. 1996) 918 S.W.2d 526; *Beachem v. A.G. of Mo.* (8th Cir. 1987) 808 F.2d 1303; *Hudson v. Moran* (9th Cir. 1985) 760 F.2d 1027; *People v. Crossen* (N.Y. 1985) 485 N.Y.S.2d 189; *Sherman v. State* (Id. 1984) 693 P.2d 1071; *Watson v. Dupnik* (Ariz. App. 1981) 626 P.2d 622; *United States v. Palmer* (3rd Cir. 1978) 574 F.2d 164; *United States v. Hobson* (8th Cir. 1982) 686 F.2d 628. To the contrary is *People v. Office* (Mich. App. 1983) 337 N.W.2d 592, but called into doubt by *People v. Wantly* (Mich. App. 1991) 471 N.W. 2d 922, 923.

232. *In re Brooks* (1987) 189 Cal.App.3d 866; *People v. Reyes* (1979) 98 Cal.App.3d 524; *People v. C'Allah* (N.Y. 1984) 474 N.Y.S.2d 305; *People v. Cella* (1981) 114 Cal.App.3d 905.

233. *New York v. Hill* (2000) 528 U.S. 110 [attorney consents to trial date outside IAD time limit]; *State v. Onapolis* (W. Va. 2000) 541 S.E.2d 611; *State v. Nonahal* (Wisc. App. 2001) 626 N.W.2d 1; *State v. Fuller* (Minn. App. 1997) 560 N.W.2d 97; *Ward v. Comm.* (Ky. App. 2001) 62 S.W.3d 399; *State v. Schmidt* (Ha. App. 1997) 932 P.2d 328; *People v. Reid* (1995) 627 N.Y.S.2d 234; *People v. Williams* (1987) 194 Cal.App.3d 124; *People v. Sampson* (1987) 191 Cal.App.3d 1409; *Brown v. Wolff* (9th Cir. 1983) 706 F.2d 902; *Dillman v. State* (Fla. 1982) 411 So.2d 964; *State v. Grizzell* (Fla.App. 1981) 399 So.2d 1091; *United States v. Oldaker* (4th Cir. 1987) 823 F.2d 778; *State v. Dorsett* (N.C. 1986) 344 S.E.2d 342; *State* v. *Edwards* (Fla. App. 1987) 509 So.2d 1161; *Moon v. State* (Ga. 1988) 375 S.E.2d 442; *People v. Nitz* (1990) 219 Cal.App.3d 164; *Drescher v. Superior Court* (1990) 218 Cal.App.3d 1140; *Gray v. Benson* (10th Cir. 1979) 608 F.2d 825.

234. *United States v. Lawson* (2d Cir. 1984) 736 F.2d 835; *People v. Moody* (Colo. 1984) 676 P.2d 691; *Yellen v. Cooper* (10th Cir. 1987) 828 F.2d 1471; *People v. Nitz* (1990) 219 Cal.App.3d 164; *Drescher v. Superior Court* (1990) 218 Cal.App.3d 1140; *People v. Sampson* (1987) 191 Cal.App.3d 1409.

to alleged violations will sometimes be considered a waiver of those claims.[235]

3. ***Transfer by Other Method***

The provisions of the IAD only apply where the transfer of custody is accomplished by way of the IAD. There are other methods by which to temporarily transfer custody of a prisoner for the purpose of trial in another jurisdiction. When one of these methods is used, the IAD provisions do not apply. Thus, where extradition with an accompanying executive agreement is used, the IAD does not apply.[236] Likewise, if the transfer is made under the authority of a writ of habeas corpus ad prosequendum or ad testificandum, the IAD does not apply.[237] However, where a detainer had been lodged, some courts have held a later writ of habeas corpus ad prosequendum triggers the protections of the IAD.[238]

4. ***Prisoner's Escape***

A prisoner's request for disposition of charges under Article III becomes void upon his escape from custody and he is no longer entitled to the protections of the IAD.[239] (Art. III, par. (f).) Any

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235. *Sipe v. State* (Ind. App. 1998) 690 N.E.2d 779; *Drescher v. Superior Court* (1990) 218 Cal.App.3d 1140; *People v. Rhoden* (1989) 216 Cal.App.3d 1242; *People v. Sampson* (1987) 191 Cal.App.3d 1409; *Mars v. United States* (6th Cir. 1980) 615 F.2d 704; *Williams* v. *State* (Ind. 1989) 533 N.E.2d 1193; *People v. Moody* (Colo. 1984) 676 P.2d 691; *Johnson v. State* (Fla. 1983) 442 So.2d 193; *Reid v. State* (Ind. App. 1996) 670 N.E.2d 949; *State v. Harper* (Neb. 1993) 508 N.W.2d 584. But see *State v. Edwards* (Fla. App. 1987) 509 So.2d 1161; *Snyder v. State* (Nev. 1987) 738 P.2d 1303; *State* v. *Lionberg* (R.I. 1987) 533 A.2d 1172. (See *Reed v. Farley* (1994) 512 U.S. 339 [federal habeas unavailable if no objection].)

236. *People v. Quackenbush* (Colo. 1984) 687 P.2d 448; see also *Giardino v. Bourbeau* (Conn. 1984) 475 A.2d 298; *Comm.* v. *Wilson* (Mass. 1987) 504 N.E.2d 1060; *Drescher v. Superior Court* (1990) 218 Cal.App.3d 1140. Also, if the IAD transfer itself is modified by an executive agreement, the IAD provisions so modified do not apply. (*Pitsonbarger v. Gramley* (7th Cir. 1998) 141 F.3d 728.)

237. *Stewart v. Bailey* (4th Cir. 1993) 7 F.3d 384; *Winningham v. State* (Mo. App. 1989) 765 S.W.2d 724; *United States v. Moore* (8th Cir. 1987) 822 F.2d 35; *United States v. Bamman* (4th Cir. 1984) 737 F.2d 413; *People v. Paulus* (Mich. 1982) 320 N.W. 2d 337; *Carmona v. Warden* (S.D.N.Y 1982) 549 F.Supp. 621; *United States v. Trammel* (7th Cir. 1987) 813 F.2d 946; *Baxter v. U.S.* (8th Cir. 1992) 966 F.2d 387; *State v. Torres* (Md.App. 1991) 587 A.2d 582; *State v. Eesley* (Wis. 1999) 591 N.W.2d 846 [writ of habeas corpus ad prosequendum is not a detainer]; *State v. Williams* (Neb. 1997) 573 N.W.2d 106 [same].

238. *Webb v. State* (Ind. 1982) 437 N.E.2d 1330; *People v. Paulus* (Mich. 1982) 320 N.W.2d 337. See also *United States v. Mauro* (1978) 436 U.S. 340.

239. *Birdwell v. Skeen* (5th Cir. 1992) 983 F.2d 1332.

escape from the temporary custody of the receiving state "may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law." (Art. V, par. (g).)

F. TOLLING OF SENTENCE

The prisoner's sentence imposed by the sending state is ***not*** tolled during the period of his temporary custody in the receiving state. Rather, his term continues to run and he may earn good time credit according to the law of the sending state. (Art. V, par. (f).)

G. WHERE IAD SHOULD NOT BE USED

1. *Mentally Ill Prisoners*

The IAD cannot be used to transfer a prisoner who is adjudged to be mentally ill. (Art. VI, par. (b).)

2. *Death Penalty Cases*

Although its provisions would otherwise apply regardless of the charge pending in the receiving state, the IAD should ***not*** be used to obtain temporary custody of a prisoner where he is facing capital charges in the receiving state. The IAD requires that the prisoner be returned to the sending state at the "earliest practicable time consonant with the purposes of [the] agreement" following disposition of the receiving state's charges. (Art. V, par. (e).) Those purposes include eliminating the uncertainties, anxiety and apprehension caused by pending charges which obstruct programs of prison treatment and rehabilitation. Such programs have little application to a condemned prisoner so there is no purpose served in returning him to the sending state.[240/]

Therefore, in death penalty cases, the transfer of custody for trial should be accomplished through extradition with an executive

240. It has been held that even if the IAD is used in a capital case, its return provisions do not apply to a condemned prisoner, at least where supplemented by an executive agreement. (*People v. Pitsonbarger* (Ill. 1990) 568 N.E.2d 783; *Pitsonbarger v. Gramley* (7th Cir. 1998) 141 F.3d 728; *Moon v. State* (Ga. 1988) 375 S.E.2d 442. See *New York v. Poe* (E.D. Okla. 1993) 835 F.Supp. 585 [sending state can waive return by agreement with receiving state].)

agreement providing for return to the sending state only if the death penalty is not imposed. (See Form 4.)[241/]

3. ***Early Parole Date***

Where the prisoner's parole date is imminent -- before trial in the receiving state could be completed or shortly thereafter -- it may not be desirable to return him to the sending state. In these cases the IAD should not be used; rather the prisoner should be ***extradited*** when he paroles. It is not necessary that he be transferred to local custody before being extradited -- the demanding state can take custody directly from the warden if the governor's warrant was issued in time for arraignment and any habeas corpus proceedings to be completed before the parole date. (See **NOTE**, p. 69.)[242/]

4. ***Other Non-IAD Cases***

Executive agreements may also be used to transfer custody of prisoners in other situations where the IAD does not apply. These would include the temporary transfer of local jail inmates, tried but unsentenced prisoners, and probation and parole violators.

NOTE: A useful reference, which cites numerous state and federal court decisions regarding the IAD, appears at 98 A.L.R.3d 160.

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241. Similarly, it is arguable the IAD does not apply to the temporary transfer of a prisoner condemned in the sending state. Such a prisoner has not "entered upon a term of imprisonment" (Art. III, par. (a)), but is held pending his execution. Also, the underlying purposes of the IAD, stated above, would likewise be inapplicable to such a prisoner.

242. However, it should be remembered that a prisoner may request disposition of charges under the IAD at any time up to his date of release. Also, the prosecutor in the receiving state may wish to commence trial before the prisoner is paroled. In either case, the IAD may be used. If the parole date arrives before trial is completed, the prisoner may be paroled to the receiving state. The IAD would cease to apply once the prisoner is paroled.

IV. INTERSTATE RENDITION OF WITNESSES

A. UNIFORM ACT TO SECURE THE ATTENDANCE OF WITNESSES FROM WITHOUT A STATE IN CRIMINAL PROCEEDINGS

Most states and some territories[243] are signatories to the Uniform Act which compels out-of-state witnesses to appear and testify.[244] It should be noted that this Act may be used by defendants as well as prosecutors. (*People v. Cavanaugh* (1968) 69 Cal.2d 262.)[245] Furthermore, the great weight of authority also applies this Act to the issuance of a subpoena duces tecum.[246] (For a general review of the Act, see 44 A.L.R.2d 732.)

To compel an out-of-state witness to testify, the following steps are generally followed:

1. The prosecutor in the requesting state prepares an affidavit establishing the materiality and necessity of the witness. Usually this is an uncooperative witness who will not return to testify voluntarily. The affidavit should designate exactly where the witness can be located.[247]

2. The prosecutor presents the affidavit and a corresponding order (certificate) to the trial court.

3. The court issues a certificate which indicates that the witness is material to a criminal prosecution pending in the court and will be required for a specific number of days. It is the requesting state's

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243. The Act is found at 11 ULA 7. See Appendix M for state statutory references.

244. The Act is constitutional. (*New York v. O'Neill* (1959) 359 U.S. 1; *Vannier v. Superior Court* (1982) 32 Cal.3d 163.) Prosecutors should utilize the Act to forestall claims that they have not exercised due diligence in procuring missing ("unavailable") witnesses. (*Acosta-Huerta v. Estelle* (9th Cir. 1993) 7 F.3d 139; *People v. Blackwood* (1983) 138 Cal.App.3d 939, 946; *People v. Masters* (1982) 134 Cal.App.3d 509, 525-526 and fn. 11; *People v. Woods* (1968) 265 Cal.App.2d 712, 715; *People v. Washington* (1967) 248 Cal.App.2d 470.) Such procedures are time-consuming and should be instituted as far ahead of trial as possible. (*People v. Masters*, *supra*, at p. 526, fn. 11; *People v. DuBose* (1970) 10 Cal.App.3d 544, 549.)

245. Thus, familiarity with the Act can also be useful in forestalling continuances sought by defendants who are making frivolous motions to secure out-of-state witnesses.

246. *Application of a Grand Jury of the State of New York* (Mass. App. 1979) 397 N.E.2d 686; see also Annot., 7 A.L.R. 4th 836.

247. *State v. Smith* (N.J. App. 1965) 208 A.2d 171, 175; *Ex parte Armes* (Tex. App. 1979) 582 S.W.2d 434.

burden to show materiality.[248/] Although some states have held that the requesting state's certificate need only state that the witness is "material and necessary," other states may require additional information.[249/] Obviously, the certificate cannot be expected to recite the exact substance of the witness' expected testimony. If necessary, the certificate should also recommend that the witness be taken into immediate custody (i.e., to prevent the witness from fleeing). It is a matter of the court's discretion whether to issue the certificate and the court may limit the number of witnesses sought.[250/]

4. After the requesting state court signs the certificate, the prosecutor contacts the chief prosecuting attorney in the state and county where the witness is located in order to facilitate service. The certificate, a warrant for fees and mileage expenses, and copies of the requesting state's criminal subpoena are then forwarded to the asylum state. The requesting state should request a certified copy of the asylum state court's order directing a hearing on the request (see *infra*) and of the proof of service of that order on the witness.

5. The asylum state prosecutor should arrange a time and place for a court hearing and secure a court order directing that the witness appear at the hearing. The hearing is mandatory.[251/] The local prosecutor will also arrange for service of the court's order. Certified copies of the court's order and proof of service should be sent to the requesting state. If the certificate has recommended that the witness be taken into immediate custody, the asylum state judge may order that the witness "be forthwith brought to him for said hearing" without notification.

6. At the hearing, the asylum state judge must first find that the requesting state has "by its laws made provision for commanding persons within that state to attend and testify" in the requesting state ("reciprocity").[252/] It is not necessary that the requesting state's law

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248. *People v. McCartney* (1976) 381 N.Y.S.2d 855, 857, and cases cited therein.

249. See, e.g. *Vannier v. Superior Court* (1982) 32 Cal.3d 163, 173-174.

250. *People v. Cavanaugh* (1968) 69 Cal.2d 262, 266-267, and cases cited therein; see also, Annot. 12 A.L.R. 4th 742, 12 A.L.R. 4th 771.

251. *M.C.A. v. State of California* (1982) 128 Cal.App.3d 225, 228.

252. *Ortez v. State* (Ind. 1975) 333 N.E.2d 838, 846-847.

for commanding witnesses be identical in every respect to the asylum state's (e.g., provisions for fees and expenses).[253]

7. The court must then find that the witness is "material and necessary" to the requesting party's case. Ordinarily, the requesting state court's certificate is "prima facie evidence of all the facts stated therein." Nevertheless, a court may consider additional evidence as well. Ordinarily, no witnesses are called.[254] It may reject the requesting state's request if it finds that the witness' testimony is merely cumulative.[255] Courts have also rejected attempts to subpoena high-ranking government officials.[256] However, questions of privilege should be litigated in the requesting state.[257]

8. The court must consider whether it will cause "undue hardship" for the witness to testify. It is the witness' burden to show hardship.[258]

9. The court must also determine whether the laws of the requesting state will protect the witness from arrest or service of civil and criminal process.

10. Upon making these determinations, the asylum state court shall issue a subpoena with the certificate attached directing the witness to attend and testify in the requesting state at a specified time and place. If the witness has been taken into custody, the court may order that the witness be maintained in custody and immediately transferred to the custody of an officer of the requesting state.

11. Review of the court's order can be sought by appeal or by writ.[259]

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253. *Vannier v. Superior Court* (1982) 32 Cal.3d 163, 174.

254. Cf. *Vannier v. Superior Court* (1982) 32 Cal.3d 163, 173.

255. *People v. McKinney* (1979) 95 Cal.App.3d 712, 741.

256. *Civiletti v. Municipal Court* (1981) 116 Cal.App.3d 105.

257. *In re Pitman* (N.Y.S. 1960) 201 N.Y.S.2d 1000, 1002; see also Annots., 12 A.L.R. 4th 742, 12 A.L.R. 4th 771.

258. *Ex parte Armes* (Tex. Crim. App. 1979) 582 S.W.2d 434, 439, and cases cited therein.

259. *Vannier v. Superior Court* (1982) 32 Cal.3d 163; *M.C.A. v. State of California* (1982) 128 Cal.App.3d 225, 228.

12. Failure to obey the asylum state's court order after being tendered or paid the fees and expenses will result in punishment for disobeying a subpoena.

B. PRISONER WITNESSES

The Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act has been enacted in whole or substantial part by about one-third of the states.[260] The procedures prescribed by the Act are similar to those outlined in the Out-of-State Witness Act (see pp. 93-96). Reciprocity is required.

A requesting state judge certifies that there is a pending criminal proceeding, and that a person confined in a penal institution in a sister state which has also enacted the Act may be a material witness, and that the person's presence is required at a specified time. The certificate is presented to a judge in the sister state who has jurisdiction over the prisoner and a hearing is set.

At the hearing, the judge determines whether the prisoner-witness may be material and necessary, whether the interests of the confining state will be adversely affected, and whether the laws of the requesting state protect the prisoner-witness from service of criminal and civil process. If it is found the prisoner may be a material witness, the state's interests are not adversely affected and the prisoner will be immune from service of process, the judge shall order the prisoner to attend and testify and order his custodian to produce him at the proceeding. Appropriate conditions may also be included in the order, and it shall provide for the return of the prisoner after his testimony, arrangements for payment of expenses and safeguards on the prisoner's custody.

The Act does not apply to persons confined as insane or mentally ill. Some states do not apply the Act to prisoners under a sentence of death.

For states not a party to the Uniform Act, these transfers are normally accomplished by using the out-of-state witness act. However, they may also be accomplished by executive agreement or, in the case of federal prisoners, the issuance of a writ of habeas corpus ad testificandum by the trial court served on the federal warden.[261] (*Barber v. Page* (1968) 390 U.S.

260. The Act is found at 11A ULA 455. See Appendix N for state statutory references.

261. A state writ of habeas corpus ad testificandum to a federal warden should be accompanied by a "ten point letter" setting forth pertinent information regarding the need for the prisoner, the nature of the action, when he will be returned, etc. (See Form 9.)

719, 723, fn. 4.) Either approach requires assurance that the prisoner will be returned to custody in the asylum state or federal prison.

C. MILITARY WITNESSES

Two branches of the armed services have promulgated procedures for the subpoenaing of military personnel. These regulations are located at 32 Code of Federal Regulations 516 (Army) and 32 Code of Federal Regulations 720.21 (Navy).

Generally, all services permit service of process on its personnel subject "to reasonable limitations" or except in unusual cases where ". . . compliance with the mandate of the process would seriously prejudice the public interest." Service of process should not occur without first contacting the commanding officer since questions of privileged information, overseas travel, and military necessity may be involved. The military branches observe the rules of service of subpoenas set forth in the applicable state law. Therefore, for example, service personnel who are not stationed within the territorial jurisdiction of the court to which they are being subpoenaed are not compelled to appear as witnesses. Indeed, the military may not allow that person to appear if his testimony involves privileged information, overseas travel, expert testimony, or breach of military necessity.

V. OTHER PROVISIONS FOR INTERSTATE RENDITION

A. UNIFORM ACT FOR OUT-OF-STATE PROBATIONER OR PAROLEE SUPERVISION AND INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

The Uniform Act for Out-of-State Probationer or Parolee Supervision (Uniform Act) has been adopted by all states and several territories.[262] Essentially, the Uniform Act allows signatory states ("sending states") to release parolees and probationers and be supervised to reside in other states ("receiving states"). Unless the receiving state consents, parolees or probationers can only take advantage of the Uniform Act if they have been residents of the receiving state continuously (resided in the receiving state for more than one year before coming to the sending state and lived in the sending state continuously for less than six months before committing a crime) or have family in the receiving state and can obtain employment. Receiving state agents supervise the probationer or parolee and receiving state standards apply.

262. See Appendix O for statutory references.

Parolees or probationers who are sent out of state waive extradition and may be retaken by the sending state's agents without any formality except establishing the authority of the officer and the identity of the person retaken.[263] However, if the individual is suspected of a crime or has charges pending, the consent of the receiving state is necessary before he may be retaken.

Despite the Uniform Act's intent to reduce formalities, some states grant a probationer or parolee the right to a hearing to challenge his return and the right to counsel. The issues at the hearing are:

1. Whether the probationer or parolee was allowed to reside in the receiving state pursuant to the compact;

2. Whether the probationer's or parolee's return to the sending state has been ordered; and

3. Identity (probable cause).

Certified copies of appropriate documents from the sending state are conclusive proof of the first two issues.

The court shall issue an order forthwith directing the probationer's or parolee's return if it concludes the compact has been properly invoked. If the probationer or parolee desires to challenge the order by writ of habeas corpus, a reasonable time is allowed to make such application.[264] The administrator appointed by the governor to coordinate compliance with the compact may deputize "any person regularly employed by another state" to effect the return of a probationer or parolee.

The Uniform Act applies to "third-state" cases as well. In other words, where a parolee or probationer leaves the receiving state and is found in a third state, the Uniform Act allows the sending state to enter the third state to effect his return.

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263. *Chandler v. Fontenot* (Tex. App. 1994) 883 S.W.2d 764. The Uniform Act is constitutional. (*In re Albright* (1982) 129 Cal.App.3d 504, 509; *People v. Velarde* (Colo. 1987) 739 P.2d 845.) Also, it is not coercive or unreasonable to condition parole release on a prior waiver of extradition. (*Pierson v. Grant* (8th Cir. 1975) 527 F.2d 161.)

264. Obviously, any agent who is retaking a probationer or parolee in another "receiving" state should be aware of procedural requirements in that state. (*Gagnon v. Scarpelli* (1973) 411 U.S. 778, 782-783, fn. 5.)

In an effort to improve the system of interstate supervision of adult offenders, upon the recommendation of a task force of the National Institute of Corrections, the Interstate Compact for the Supervision of Adult Offenders (Interstate Compact) was drafted, with the objective that it would be enacted by the legislatures of all the states, and eventually replace the old Uniform Act.[265/]

The Interstate Compact creates an Interstate Commission consisting of commissioners appointed by each compacting state's State Council for Interstate Adult Offender Supervision. Among other things, the Interstate Commission has the authority to promulgate and enforce rules and procedures by which the compacting states agree to be bound. As new rules and procedures are adopted, they will eventually replace the old ones.

Questions regarding the current status of the Interstate Compact and its operation within each state should be addressed to the state's Compact Administrator or State Commissioner.

B. INTERSTATE COMPACT ON JUVENILES

1. *Introduction*

Because of variations in state laws, a person who is a juvenile in one state may not be so considered in another. The Interstate Compact on Juveniles addresses this problem by applying the law of the state from which the juvenile originally came. If he is a juvenile under its laws, he is a juvenile as to all states. (All states, the District of Columbia and Puerto Rico are members of the Compact.)[266/]

The purpose of the Interstate Compact on Juveniles is to provide for the cooperative supervision of juveniles, the return of delinquents and

265. See Appendix O-1 for statutory references.

266. See Appendix P for statutory references.

those charged with being delinquents by reason of commission of a crime,[267] and the return of runaways.

A ***delinquent*** juvenile is defined by the act as a juvenile adjudged delinquent and subject to jurisdiction of the court. A ***runaway*** is defined as a juvenile ***not*** adjudged delinquent who has run away without consent of a parent, guardian, or person or agency entitled to legal custody.

2. ***Demanding State Procedure***

A parent, guardian or other legal custodian petitions the appropriate court for issuance of a requisition for the return of the juvenile. The petition shall include:

a. The name and age of the juvenile;

b. The petitioner's basis for entitlement of custody;

c. The circumstances of the juvenile's running away; and

d. The present location of the juvenile.

The petition shall be verified by affidavit filed in duplicate, and accompanied by two certified copies of the parent's, guardian's, etc., entitlement to custody, i.e., birth certificate, letter of guardianship, custody decree, etc.

3. ***Hearing***

The judge of the court to whom the petition is directed may conduct a hearing to determine:

a. Whether the parent, guardian, etc., is entitled to legal custody;

b. Whether the juvenile has run away without the consent of the parent, etc.;

c. Whether the juvenile is legally emancipated; and

267. Most states have enacted the Rendition Amendment to the Interstate Compact on Juveniles. This amendment provides that the Compact applies to "any juvenile charged with being a delinquent by reason of violating any criminal law." Under this provision, formal extradition, authorized for juveniles in many jurisdictions, will usually be unnecessary.

d. Whether it is in the best interest of the juvenile to compel his return.

If the judge determines the juvenile should be returned, he shall prepare a written requisition to the asylum state. The requisition shall set forth the name and age of the juvenile, the determination that the juvenile has run away, and the determination that it is in the best interest and for the protection of the juvenile that he be returned. The judge shall establish a reasonable time limit in which to test the legality of the proceeding.

If a proceeding is pending before the court for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile, the court may issue a requisition for the return of the juvenile on its own motion regardless of the consent of the parent, guardian, etc.

4. ***Asylum State Procedures***

Upon receipt of the requisition in the asylum state by the court or authority to whom the requisition is addressed, a detention order is issued to the appropriate authorities to take the juvenile into custody and to detain him. The detention order shall substantially recite facts necessary to validate the issuance of the order. The juvenile is entitled to be taken before a judge. The judge shall inform the juvenile of the demand for his return. Appointment of counsel is optional.[268/]

If there are pending criminal charges or suspicion of criminal acts in the asylum state, the juvenile ***shall not*** be returned without the consent of the asylum state until he is discharged from prosecution or other proceedings, imprisonment, detention or supervision.

5. ***Escapees and Absconders***

a. The probation or parole authority or institution from which the delinquent juvenile has escaped files a written requisition with the court or executive authority in the state where the juvenile

268. A requisition is optional under the compact in the situation where reasonable information is established that the juvenile is a runaway. After establishing such "reasonable" information, the juvenile may be taken into custody without a requisition and brought forthwith before a judge. At the hearing, the judge will make the determination whether sufficient cause exists to hold the juvenile. If there is sufficient cause, the juvenile may be held 90 days.

is located. The requisition shall state the name and age of the juvenile, the particulars of his adjudication as a delinquent, the particulars of the breach of probation or escape, and the location of the juvenile. The requisition shall be sent to the court or executive and must be verified/executed in duplicate and accompanied by two certified copies of the judgment, adjudication or order of commitment. One copy of the requisition shall be filed with the compact administrator.

b. Upon receipt of the requisition, the court or executive authority shall issue a detention order. The order must set forth facts validating the order and detention. A hearing before a judge is mandatory prior to delivering the juvenile to the demanding state authorities. Appointment of counsel is discretionary. If the judge determines the requisition is in order, the juvenile is delivered to the demanding state's authorities.

c. Upon reasonable information that the person is a delinquent juvenile who has absconded from probation or parole or escaped, the juvenile may be taken into custody without a requisition. He must be taken forthwith before a judge to determine if sufficient cause exists to detain him (not to exceed 90 days). Appointment of counsel is discretionary. However, if pending criminal charges or suspicion of criminal acts in the asylum state exist, the delinquent juvenile ***shall not*** be returned without the consent of the asylum state until discharged from prosecution or other proceeding, imprisonment, detention or supervision.

d. The state to which the juvenile is returned is responsible for transportation costs.

6. ***Voluntary Return***

A juvenile who has absconded, escaped or run away, who is taken into custody without a requisition, may consent to his immediate return. The waiver or consent must be executed in writing in the presence of a judge. The judge must inform the juvenile of his rights under the compact prior to executing the waiver/consent. When it is duly executed, the waiver/consent shall be forwarded to the compact administrator of the state. The juvenile is then placed in the custody of the demanding state authorities. (The juvenile, upon request of the demanding state, may be ordered to return unaccompanied.)

7. ***Cooperative Supervision of Probationers and Parolees***

a. The compact provides for allowing a delinquent juvenile on probation or parole to reside in a receiving state. The receiving state shall have the opportunity to make an investigation as necessary. The parent, guardian or legal custodian of the juvenile need not be a resident of the receiving state if the transfer is acceptable to the receiving state. The receiving state is responsible for visitation and supervision. (The laws of the receiving state apply.)

b. After "consultation" with the receiving state, the sending state may retake the juvenile. No formalities are required except to establish the authority of the officer who seeks to return the juvenile and to establish the identity of the juvenile. The decision to retake the juvenile is conclusive and not reviewable. However, if there are pending charges in the receiving state, return is not permitted without the consent of the receiving state.

c. The sending state is responsible for costs. But, parents are financially responsible for their children. Thus, when a fugitive juvenile is returned, county probation officers generally expect the parents to pay the cost of his return. If the parents of the juvenile are indigent, the general rule is that the county is liable, unless an agent is appointed and extradition procedures are undertaken.

8. ***Out-Of-State Confinement***

The Out-Of-State Confinement Amendment to the Interstate Compact on Juveniles provides that, rather than being returned to the sending state, a juvenile probationer, parolee, escapee or absconder may be confined in an appropriate juvenile institution in the receiving state. Such a confined juvenile remains subject to the jurisdiction of the sending state and may be removed from the receiving state's institution at any time for return to the sending state. The sending state is responsible for all costs incurred under this amendment.

NOTE: Inquiries about the use of the Juvenile Compact should be directed to the state's compact administrator. (See Appendix Q for a directory of state contacts.)

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FORM 1

APPLICATION FOR REQUISITION

Standard Fugitive Form

FORM 1

Name of fugitive: _____
State/County of Refuge: _____
Agency Making Application: _____
Official Making Application: _____
Phone Number: _____

APPLICATION FOR REQUISITION
Standard Fugitive Form for
Persons charged with a crime(s)

To the Governor of the State of _____ (demanding state):

I HAVE THE HONOR HEREWITH TO MAKE APPLICATION for a requisition upon the governor of the State of _____ (asylum state) for the arrest and rendition of _____ who is charged in this county and state with the commission of the following criminal offense(s): (list title of crime(s) and code section):

_____
_____
_____
_____
_____
_____

and who appears from the accompanying proof, and particularly the annexed affidavit submitted herewith, and who, as appears from that affidavit, is a fugitive from the justice of this state, and has taken refuge in the State of _____.

I HEREBY CERTIFY:

THAT I have carefully examined the case, and believe that the facts stated in the accompanying proof are true and that the fugitive is guilty of the crime(s) charged; that the ends of public justice require that the fugitive be brought back to this state at public expense; that I believe I have sufficient evidence to secure the fugitive's conviction; that the charge was preferred and this application is made in good faith and not for the purpose of enforcing the collection of any debt or for any private purpose, and that if the fugitive is returned to this state the criminal proceedings will not be used for any of these purposes, but that it is my intention to diligently prosecute the fugitive for the crime(s) charged.

THAT no other application has been made for a requisition for this fugitive growing out of the transaction from which the charge herein originated.

THAT the fugitive is properly charged in accordance with the laws of this state; that to the best of my belief the fugitive was personally and physically present in this state at the time of the commission of the crime, and thereafter was found in the State of _____; that the definition of the aforesaid crime of which the fugitive is charged, and the punishment therefor, as prescribed by the laws of this state, are as follows:

(*Insert copies of the relevant statutes or refer to an attachment containing those statutes*.)

THAT the fugitive is now under arrest in (city or county)_____, the State of _____, having been arrested on _____.

THAT in support of this application, I enclose true and correct copies of the [INDICTMENT] [INFORMATION and AFFIDAVIT] [AFFIDAVIT BEFORE A MAGISTRATE] [and WARRANT OF ARREST], which allege the facts required to be established, along with the following additional documents:

(*such as identification packet; UIFSA affidavit if applicable; and court exemplification/certification*):

_____

_____

_____

all of which are authentic and properly authenticated in accordance with the laws of this state; and that the copies of the papers submitted herewith have been compared with each other and are in all respects exact counterparts of this application and accompanying documents.

I NOMINATE and propose the name of _____ (sheriff, police chief, etc.) of the _____(law enforcement agency) and/or his/her designated authorized agent(s) for designation as agent of this state to return the fugitive and represent that he is a proper person for such designation; that he/she has no private interest in the arrest of the fugitive other than in the discharge of his duty as such officer. **(*Some states require the nomination of a female officer for the transport of a female fugitive.)**

DATED this _____day of _____, 200___.

Respectfully submitted,

_____

(Name)

_____

(Title)

STATE OF _____)
) ss.
County of _____)

_____, being first duly sworn, deposes and says:

THAT he/she is the (title)_____, with the office of (agency), _____ State of _____; that he/she has read the attached application for requisition directed to the Governor of this State and knows and understands its contents; and that he/she is informed and believes and on such information and belief alleges, that the statements made in the application are true.

_____
(prosecuting attorney; corrections or parole official; etc.)

Subscribed and sworn to me this ___ day of _____, 200___.
County Clerk of the County of _____
State of _____.
By: _____
[Court Executive Officer] [(Deputy) County Clerk] [Notary]

(*If notary used*)

My Commission Expires:
_____

FORM 1-A

APPLICATION FOR REQUISITION

Nonfugitive Form

FORM 1-A

Name of accused: _____
State/County of Refuge: _____
Agency Making Application: _____
Official Making Application: _____
Phone Number: _____

APPLICATION FOR REQUISITION

Nonfugitive Form Where Act[s] in Another State Constitute a Crime in This State

To the Governor of the State of _____ (demanding state):

I HAVE THE HONOR HEREWITH TO MAKE APPLICATION for a requisition upon the governor of the State of _____ (asylum state) for the arrest and rendition of _____ who is charged in this county and state with the commission of the following criminal offense(s): (list title of crime(s) and code section):

_____
_____
_____
_____
_____
_____

and who appears from the accompanying proof, and particularly the annexed affidavit submitted herewith, and who, as appears from that affidavit, committed the act(s) which intentionally resulted in the commission of the crime(s) in this state, even though the accused was not personally or physically present in this state at the time of the commission of the crime(s), and has taken refuge in the State of _____.

I HEREBY CERTIFY:

THAT I have carefully examined the case, and believe that the facts stated in the accompanying proof are true and that the accused is guilty of the crime(s) charged; that the ends of public justice require that the accused be brought back to this state at public expense; that I believe I have sufficient evidence to secure the accused's conviction; that the charge was preferred and this application is made in good faith and not for the purpose of enforcing the collection of any debt or for any private purpose, and that if the accused is returned to

this state the criminal proceedings will not be used for any of these purposes, but that it is my intention to diligently prosecute the accused for the crime(s) charged.

THAT no other application has been made for a requisition for the accused growing out of the transaction from which the charge herein originated.

THAT the accused is properly charged in accordance with the laws of this state; that to the best of my belief the accused was not personally or physically present in this state at the time of the commission of the crime, but his/her acts outside the state constitute a crime within this state; that the definition of the aforesaid crime of which the accused is charged, and the punishment therefor, as prescribed by the laws of this state, are as follows:

(Insert copies of the relevant statutes or refer to an attachment containing those statutes.)

THAT the accused is now under arrest in (city or county), in the State of _____, having been arrested on _____, and has refused to waive extradition.

THAT in support of this application, I enclose true and correct copies of the [INDICTMENT] [INFORMATION AND AFFIDAVIT] [AFFIDAVIT BEFORE A MAGISTRATE] [and WARRANT OF ARREST], which allege the facts required to be established, along with the following additional documents:

(such as identification packet; UIFSA affidavit if applicable, and court exemplification/certification):

_____

_____

_____

all of which are authentic and properly authenticated in accordance with the laws of this State; and that the copies of the papers submitted herewith have been compared with each other and are in all respects exact counterparts of this application and accompanying documents.

I NOMINATE and propose the name of _____ (sheriff, police chief, etc.) of the _____(law enforcement agency) and/or his/her designated authorized agent(s) for designation as agent of this state to return the accused and represent that he/she is a proper person for such designation; that he/she has no private interest in the arrest of the accused other than in the discharge of his duty as such officer. ***(*Some states require the nomination of a female officer for the transport of a female defendant.)***

DATED this ____day of _____, 200___.

Respectfully submitted,

_____

(Name)

_____

(Title)

STATE OF _____)
) ss.
County of _____)

_____, being first duly sworn, deposes and says:

THAT he/she is the (title) _____, with the office of (agency) _____, State of _____; that he/she has read the attached application for requisition directed to the Governor of this State and knows and understands its contents; and that he/she is informed and believes and on such information and belief alleges, that the statements made in the application are true.

_____
(prosecuting attorney; corrections or parole official; etc.)

Subscribed and sworn to me this ___ day of _____, 200___.
County Clerk of the County of _____
State of _____.
By: _____
[Court Executive Officer] [(Deputy) County Clerk] [Notary]

(If notary used)

My Commission Expires:
_____

FORM 1-B

APPLICATION FOR REQUISITION

For Escapees, Probation and Parole Violators

FORM 1-B

Name of Fugitive: _____
State/County of Refuge: _____
Agency Making Application: _____
Official Making Application: _____
Phone Number: _____

APPLICATION FOR REQUISITION

For Escapees, Probation and Parole Violators

To the Governor of the State of _____ (demanding state):

I HAVE THE HONOR HEREWITH TO MAKE APPLICATION for a requisition upon the governor of the State of _____ (asylum state) for the arrest and rendition of _____ who stands convicted by virtue of the final judgment and sentence in this county and state of the commission of the following criminal offense(s): (list title of crime(s) and code section):

_____
_____
_____
_____
_____
_____

and who on or about

_____

(date) [escaped from custody] [violated the terms and conditions of probation] [or violated the terms and conditions of parole]

as appears from the accompanying proof, and particularly the annexed affidavit submitted herewith, and who, as appears from that affidavit, is a fugitive from the justice of this state and has taken refuge in the State of _____.

I HEREBY CERTIFY:

THAT I have carefully examined the case, and believe that the facts stated in the accompanying proof relating to the fugitive's conviction of the offenses, and the subsequent [escape] [probation violation] [parole violation] are true; that the ends of public justice require that the fugitive be brought back to this state at public expense; and this application

is made in good faith and not for the purpose of enforcing the collection of any debt or for any private purpose, and that if the fugitive is returned to this state the criminal proceedings will not be used for any of these purposes.

THAT no other application has been made for a requisition for the fugitive growing out of the facts and circumstances upon which this application is made.

THAT the fugitive is now under arrest in (city or county_____) in the State of _____, having been arrested on _____, and has refused to waive extradition.

THAT in support of this application, I enclose true and correct copies of the [JUDGMENT OF CONVICTION] [SENTENCING ORDER] [ORDER FOR PROBATION] , [WARRANT OF ARREST (e.g., bench warrant, parole board warrant)], and AFFIDAVIT, which allege the facts required to be established, along with the following additional documents:

(such as identification packet; probation or parole documents, affidavits and court or Department of Corrections exemplification/certification):

_____

_____

_____

all of which are authentic and properly authenticated in accordance with the laws of this state; and that the copies of the papers submitted herewith have been compared with each other and are in all respects exact counterparts of this application and accompanying documents.

I NOMINATE and propose the name of _____ (sheriff, police chief, etc.) of the _____(law enforcement agency) and/or his/her designated authorized agent(s) for designation as agent of this state to return the fugitive and represent that he is a proper person for such designation; that he/she has no private interest in the arrest of the fugitive other than in the discharge of his duty as such officer. (*Some states require the nomination of a female officer for the transport of a female fugitive.)

DATED this _____day of _____, 200___.

Respectfully submitted,

_____

(Name)

_____

(Title)

STATE OF _____)
) ss.
County of _____)
_____, being first duly sworn, deposes and says:

THAT he/she is the (title) _____, with the office of (agency) _____, State of _____; that he/she has read the attached application for requisition directed to the Governor of this State and knows and understands its contents; and that he/she is informed and believes and on such information and belief alleges, that the statements made in the application are true.

_____
(prosecuting attorney; corrections or parole official; etc.)

Subscribed and sworn to me this _____ day of _____, 200___.
County Clerk of the County of _____
State of _____
By: _____
[Court Executive Officer] [(Deputy) County Clerk] [Notary]

(*If notary used*)

My Commission Expires:
_____

FORM 2

PROBABLE CAUSE AFFIDAVIT FOR FUGITIVES

(Required When Charging by Information)

FORM 2

PROBABLE CAUSE AFFIDAVIT FOR FUGITIVES

(Required When Charging by Information)

IN THE MATTER OF THE EXTRADITION OF

_____

STATE OF _____)
) ss.
COUNTY OF _____)
_____, being first duly sworn on oath, deposes and says:

THAT he/she is a citizen of the United States of America, a resident of _____ County, State of _____, and is the complaining witness/investigating officer/prosecutor in this action;

THAT on or about the ____ day of _____, 200___, (name of fugitive) _____, was present in the County of _____, State of _____, and that at that time and place the fugitive committed the crime[s] of:
_____
_____
_____

(list title of crime and code sections violated)

in the following manner:
_____
_____
_____
_____
_____
_____
_____

(Provide a brief description of the facts of the crime)

THAT thereafter, _____ left this State and was found in the State of _____;

THAT this affidavit is not made for the purpose of enforcing the collection of any debt, or for any private purpose whatsoever, and if the requisition applied for is granted, the criminal proceedings shall not be used for any of these purposes;

THAT _____ is a fugitive from the justice of this state, was arrested on _____, and is now located in the City/County of _____, State of _____.

_____
Name of Declarant

_____
Position/Title

SUBSCRIBED AND SWORN to before me on this ____day of _____, 200___, and based on the foregoing I find probable cause exists for the issuance of a warrant of arrest for the above-named defendant and the warrant is so ordered.

_____
Judge

_____
Court

[Alternative: use a Notary]

SUBSCRIBED AND SWORN to before me on this ____day of _____, 200___.

_____
Notary

My Commission Expires:
_____

FORM 2-A

PROBABLE CAUSE AFFIDAVIT FOR

NONFUGITIVES

(Required When Charging by Information)

FORM 2-A

PROBABLE CAUSE AFFIDAVIT FOR NONFUGITIVES

(Required When Charging by Information)

IN THE MATTER OF THE EXTRADITION OF

_____

STATE OF _____)
) ss.
COUNTY OF _____)

_____, being first duly sworn on oath, deposes and says:

THAT he/she is a citizen of the United States of America, a resident of _____, County, State of _____, and is the complaining witness/investigating officer/prosecutor in this action;

THAT on or about the ____ day of _____, 200___, (name of defendant) _____, while outside this state, committed acts which intentionally resulted in the commission of a criminal offense under the laws of this state, namely the crime[s] of _____, a _____ degree felony, in violation of _____

[state code section(s)]

in the following manner:

_____
_____
_____
_____
_____
_____
_____

(Provide a brief description of the facts of the crime)

THAT the accused has taken refuge in the State of _____, City/County of _____, and was arrested on _____200___.

THAT this affidavit is not made for the purpose of enforcing the collection of any debt, or for any private purpose whatsoever, and if the requisition applied for is granted, the criminal proceedings shall not be used for any of these purposes.

_____
Name of Declarant

_____
Position/Title

SUBSCRIBED AND SWORN to before me on this ____day of _____, 200___, and based on the foregoing I find probable cause exists for the issuance of a warrant of arrest for the above-named defendant and the warrant is so ordered.

_____
Judge

_____
Court

[Alternative: use a Notary]

SUBSCRIBED AND SWORN to before me on this ____day of _____, 200__.

_____
Notary

My Commission Expires:
_____

FORM 3

CERTIFICATION FORM

FORM 3

CERTIFICATION FORM

State of _____)
) ss. Re:_____
County of _____)

I, Judge/Court Administrator/Clerk of the Court, County

of do hereby certify that I have examined the foregoing attached documents and

find them to be full, true and complete copies of the originals on file in and/or issued by this

Court.

In testimony whereof, I do hereto subscribe my name at,

_____, this day of, 200___ .
(state)

_____
JUDGE/COURT ADMINISTRATOR/
CLERK OF THE _____COURT

I, _____, Judge/Court Administrator/County Clerk of the

_____ Court of County, do hereby certify that

, whose signature is affixed above, was at the time of subscribing the same,

a judge/court administrator/clerk of said Court, and that full faith and credit are due

all his/her official acts as such.

In testimony whereof, I do hereby subscribe my name at,

_____ this day of, 200__ .
_____

_____
JUDGE/COURT ADMINISTRATOR/
CLERK OF THE _____COURT

FORM 4

EXECUTIVE AGREEMENT

FORM 4

EXECUTIVE DEPARTMENT
State of _____

EXECUTIVE AGREEMENT

TO THE EXECUTIVE AUTHORITY OF THE STATE OF _____:

WHEREAS, the undersigned as Governor of the State of [demanding state], has made demand upon the executive authority of the State of [asylum state] for the rendition of JOHN DOE as a fugitive from justice of the State of [demanding state], and which demand is in the hands of the executive authority of the State of [asylum state], and

WHEREAS, the said JOHN DOE stands charged in the State of [demanding state] with the crimes of [list charged crimes], committed in said State, as more fully appears from the requisition and the papers and exhibits attached thereto, and

WHEREAS, the said JOHN DOE [asylum state identification no. ____] is now under the jurisdiction of the [asylum state] Department of Corrections at [name and location of the institution], and

WHEREAS, the undersigned is informed and believes that said JOHN DOE will not be released and discharged from said imprisonment for a considerable length of time, and

WHEREAS, the undersigned and the prosecuting authorities of the State of [demanding state] are desirous that said JOHN DOE be brought to trial at the earliest possible date, and

WHEREAS, the powers and duties of the several states, including the State [demanding state], in matters relating to interstate extradition are contained and prescribed in Article IV, section 2, of the Constitution of the United States, and are implemented by Congress in 18 U.S.C. § 3182;

AND WHEREAS, the People of the State of [demanding state] have enacted the Uniform Criminal Extradition Act [demanding state's code section] whereby, in section [____] thereof, it is provided as follows:

When it is desired to have returned to this State a person charged in this State with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another State, the Governor of this State may agree with the executive authority of such other State for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other State, upon the condition that such person be returned to such other State at the expense of this State as soon as the prosecution in this State is terminated.

The Governor of this State may also surrender on demand of the executive authority of any other State any person in this State who is charged in the manner provided in section [____] of this code with having violated the laws of the demanding state even though such person left such demanding State involuntarily.

AND WHEREAS, the law of the State of [asylum state] similarly provides in section [asylum state's code section], that the Governor of the State of [asylum state] may, in appropriate cases, by agreement with the executive authority of another state, authorize the extradition from [asylum state] to such other state of a person imprisoned in [asylum state] in order to render such person amenable to the jurisdiction of such other state, upon the condition that he be returned to [asylum state];

NOW, THEREFORE, pursuant to the authority hereinabove set forth and in consideration of the granting of said demand for the rendition of said JOHN DOE, and the issuance of a warrant of arrest and delivering up of said JOHN DOE to the duly authorized agents of the State of [demanding state] by the executive authority of the State of [asylum state], which said acts by the executive authority of the State of [asylum state] shall constitute an acceptance of this agreement;

IT IS HEREBY AGREED by the undersigned, Governor of the State of [demanding state], that in the event said JOHN DOE shall be acquitted following a trial in the courts of the State of [demanding state], or the prosecution in the State of [demanding state] is terminated in any manner, other than by the imposition of a judgment and sentence of death, said JOHN DOE shall be returned to the State of [asylum state] at the expense of the State of [demanding state], and that the Governor, or other acting executive authority of the State of [demanding state], shall upon demand of the executive authority of the State of [asylum state] surrender said JOHN DOE to the duly authorized agents of the State of [asylum state].

[Optional]

IT IS FURTHER HEREBY AGREED by the undersigned, Governor of the State of [demanding state] and the Governor of the State of [asylum state], that in the event said JOHN DOE is returned to the State of [asylum state] following conviction and the imposition of a term of imprisonment in the State of [demanding state], said JOHN DOE shall be returned to the State of [demanding state] at the expense of the State of [demanding state], without formalities to serve said term of imprisonment upon his completion of his term of imprisonment and eligibility for parole in the State of [asylum state].

IN WITNESS WHEREOF, the undersigned Governor of the State of [demanding state] [and Governor of the State of [asylum state]], does [do] hereby covenant and agree that the above express conditions upon which the custody of JOHN DOE is granted, shall be in all respects fulfilled and complied with and are expressly accepted as the terms and conditions of his custody.

IN WITNESS WHEREOF, I have here unto set my hand at [county], in the State of [demanding state], and cause to be affixed the Seal of the State of [demanding state], on this ____ day of _____, 200___.

_____
NAME OF EXECUTIVE AUTHORITY
Governor of the State of [demanding state]

By the Governor:

_____
Secretary of State

[Optional]

_____
NAME OF EXECUTIVE AUTHORITY
Governor of the State of [asylum state]

By the Governor:

_____
Secretary of State

FORM 5

DELIVERY AGREEMENT

(Navy/Coast Guard/Marines/Air Force)

or

DELIVERY RECEIPT

(Army)

FORM 5
DELIVERY AGREEMENT
(Navy/Coast Guard/Marines/Air Force)
[or]
DELIVERY RECEIPT
(Army)

In consideration of the delivery of

_____,
(grade & name) (service number & SS number)

United States [Army] [Navy] [Marine Corps] [Air Force] [Coast Guard], to the civil

authorities of: _____, at _____
[county, state] [place of delivery]
_____, for trial upon the charge[s] of _____
_____
_____
[list all charges]
I hereby agree, pursuant to the authority vested in me
as_____
[official designation]
that the commanding officer of the _____
[unit]
will be informed of the outcome of the trial and that
_____
[name of person delivered]
will be immediately returned to the custody of the
_____
[branch of the service and location]
upon completion of the trial if acquitted, or upon satisfying the sentence imposed if convicted, or upon other disposition of the case, at the expense of the prosecuting authorities, unless the _____
[branch of the service]
indicate that return is not desired.

DATED: _____ _____
Governor/State Official (Navy)
Receiving Officer (Army)
Prosecuting Attorney (Air Force)

FORM 6

WAIVER OF EXTRADITION

FORM 6

-oo00oo-

_____ COURT OF THE STATE OF _____
IN AND FOR THE COUNTY OF _____

PEOPLE OF THE STATE OF _____,

Plaintiffs,

v.

WAIVER OF EXTRADITION
UCEA Code §

(NAME OF FUGITIVE),

Defendant.

I, _____, aka, _____, have been informed by the court that a demand is made for my surrender to the County of _____, State of _____, based upon criminal proceedings there [charging me with the commission of an offense] [alleging that I have escaped from confinement] [alleging that I have broken the terms of bail, probation, or parole].

I have been informed by the court of my right to the issuance and service of a governor's extradition warrant, as provided for in the Uniform Criminal Extradition Act, and I fully understand that right.

I knowingly and voluntarily, and without promise of reward or leniency, state that I am the identical person sought by the demanding state, that I waive the issuance and service of the governor's extradition warrant and any other legal documents and procedures which otherwise would be required to secure my return to the demanding state, and that I knowingly and voluntarily consent to my return to that state.

I wholly exonerate and hold blameless in this matter the [Sheriff of _____ County] [Chief of Police of _____] [_____ Board of Prison Terms/Pardons] [_____Department of Corrections] and all persons acting under the same, and agree to accompany to the demanding state any peace officer who may be sent to take me there, without requisition papers, warrant or rendition or other legal forms of process intended to effect my return to that state.

This agreement and waiver is made by me without reference to my guilt or innocence and shall not be considered in any manner as prejudicing my case and is not in any sense an admission of guilt.

Executed before the above-captioned court.

_____
[signature]

_____
[date]

I certify that I informed the above individual of the criminal proceedings pending against him/her and of the right to require the issuance and service of a governor's warrant of extradition as provided in the Uniform Criminal Extradition Act; and that the above individual knowingly and voluntarily, without promise, executed the foregoing waiver of extradition in my presence.

_____
[Judge]

_____
[Court]

Seal

[Forward one copy to the governor's office, and provide copies to the agent[s] of the demanding state].

FORMS 7 & 7(a)

FUGITIVE COMPLAINT

FORM 7

[NEW CRIME]

-oo00oo-

_____COURT OF THE STATE OF _____
IN AND FOR THE COUNTY OF _____

PEOPLE OF THE STATE OF _____,

Plaintiffs,

v.

FUGITIVE COMPLAINT
(UCEA Code §

(NAME OF FUGITIVE),

Defendant.

The undersigned (name & title), under oath, complains that committed the crime of in the State of and that on or about a warrant for the arrest of the said was issued in case No.:, filed in the Court in an for the County of, State of, which case charges said defendant with the commission of such crime, and that said defendant is within the State of_____ and the County of, and is a Fugitive from Justice, within the meaning of (UCEA Code §).

_____ _____

Date Complainant

FORM 7(a)

[ESCAPE/ABSCOND]

-oo00oo-

_____ COURT OF THE STATE OF _____
IN AND FOR THE COUNTY OF _____

PEOPLE OF THE STATE OF _____,

Plaintiffs,

v.

FUGITIVE COMPLAINT
UCEA Code §

(NAME OF FUGITIVE),

Defendant.

The undersigned (name & title), under oath, complains that has been convicted in case No. in the Court in and for the County of , State of , of the crime of and that on or about , a warrant was issued in said case for the arrest of said defendant for:

violation of the terms of his/her bail;

[or] escape from bail;

[or] violation of the terms of probation;

[or] violation of the terms of parole;

[or] escape from confinement;

in such case, and that said defendant is within the State of _____, County of _____, and is a Fugitive from Justice, within the meaning of (UCEA Code §.)

_____ _____

Date Complainant

FORM 8

AGREEMENT TO TOLL THE EXTRADITION PERIODS

FORM 8

AGREEMENT TO TOLL THE EXTRADITION PERIODS

_____ Court
State of _____

Before _____
Judge

-oo00oo-

IN THE MATTER OF)
the EXTRADITION OF:) STIPULATION & ORDER
) Case No.:
_____)

_____ [Defendant], by and through his/her counsel _____, and _____ [prosecutor], stipulate that the statutory periods provided for in Sections 15 and 17 of the Uniform Criminal Extradition Act, _____ [state code section], may be tolled to allow time for the Governor of this State, pursuant to Section 4 of that Act, _____ [state code section], to investigate the demand from the State of _____ for the extradition of defendant.

The periods shall be tolled until this Court is further advised by the parties that the Governor's investigation is completed.

Dated this _____ day of _____, 200__.

_____
[Defendant]

_____
[Counsel for Defendant]

_____
[Prosecuting Attorney]

****

Based upon the stipulation of the parties, and good cause shown,

IT IS ORDERED that the above-described statutory periods in this extradition matter are tolled to allow the Governor of this State time to investigate the demand for the defendant's extradition made by the State of _____. The periods shall be tolled until the parties further advise this Court that the investigation has been completed.

Copies of the Stipulation and this Order shall be served upon the Governor of the State of _____[asylum state], and the prosecutor is further ordered to advise appropriate officials in the State of _____ [demanding state] of this action.

DATED this _____day of _____, 200__ .

By the Court:

_____

Judge

FORM 9

DEPARTMENT OF JUSTICE
FEDERAL PRISON SYSTEM

FORM 9

DEPARTMENT OF JUSTICE
FEDERAL PRISON SYSTEM

TO: State Authority:_____

FROM: Warden:_____

Institution:_____

SUBJECT: Instructions for Transfer of Inmates to State Agents for Production on State Writs

Inmate's Name:_____

Reg. No.:_____

The request for transfer of an inmate to state agents for production on state writs should contain as a minimum the following information:

1. Need for appearance of inmate;
2. Name and address of court issuing writ - name of judge, name of clerk, phone number of clerk and address;
3. Nature of action;
4. Party seeking production or making request for production to state court;
5. Reason production on writ necessary and some other alternative is not available (for civil cases);
6. The name and location where the inmate will be confined during legal proceedings;
7. The date for requested proceedings;

8. The name and phone number of state agency, and specific name of agent(s) who will transport the inmate at direction of the court;

9. The projected date of return to the federal institution; and

10. A statement by the state authority assuming custody:

This is to certify that the above-named inmate will be provided safekeeping, custody, and care while in the custody of the (state authority), and that said (state authority) will assume full responsibility for that custody, and will return the inmate on conclusion of the inmate's appearance in the proceeding for which the writ issues, and that I have the full power and authority to make this certification for said (state authority) as the (title or position) for that authority.

_____ _____

(Printed name/signature) (Date)

_____ _____

(Witness' printed name/signature) (Date)

APPENDIX A

UNIFORM CRIMINAL EXTRADITION ACT

Alabama	Code 1975, §§ 15-9-20 to 15-9-65
Alaska	AS 12.70.010 to 12.70.290
Arizona	A.R.S. §§ 13-3841 to 13-3869
Arkansas	A.C.A. §§ 16-94-201 to 16-94-231
California	West's Ann.Pen.Code, §§ 1547 to 1558
Colorado	West's C.R.S.A. §§ 1973, 16-19-101 to 16-19-133
Connecticut	C.G.S.A. §§ 54-157 to 54-185
Delaware	11 De1.C. §§ 2501 to 2530
Florida	West's F.S.A. §§ 941.01 to 941.30
Georgia	Official Code of Georgia Ann., §§ 17-13-20 to 17-13-49
Hawaii	HRS §§ 832-1 to 832-27
Idaho	I.C. §§ 19-4501 to 19-4527
Illinois	S.H.A. ch. 60, 1JlJ 18 to 49
Indiana	IC 35-33-10-3
Iowa	1.C.A. §§ 820.1 to 820.29
Kansas	K.S.A. 22-2701 to 22-2730
Kentucky	KRS 440.150 to 440.420
Louisiana	LSA-C.Cr.P. arts. 261 to 280
Maine	15 M.R.S.A. §§ 201 to 229
Maryland	MD Code 1957, Art. 41, §§ 2-201 to 2-228
Massachusetts	M.G.L.A. c. 276, §§ 11 to 20R
Michigan	M.C.L.A. §§ 780.1 to 780.31
Minnesota	M.S.A. §§ 629.01 to 629.29
Missouri	V.A.M.S. §§ 548.011 to 548.300
Montana	MCA 46-30-101 to 46-30-413
Nebraska	R.R.S. 1943, §§ 29-729 to 29-758
Nevada	N.R.S. 179.177 to 179.235
New Hampshire	RSA 612:l to 612:30
New Jersey	N.J.S.A. 2A:160-6 to 2A:160-35
New Mexico	NMSA 1978, §§ 31-4-1 to 31-4-30
New York	McKinney's CPL §§ 570.02 to 570.66
North Carolina	G.S. §§ 15A-721 to 15A-750
Ohio	R.C. §§ 2963.0l to 2963.29
Oklahoma	22 Okl.St.Ann. §§ 1141.1 to 1141.30
Oregon	ORSA 133.743 to 133.857
Panama Canal Zone	6 C.Z.C. §§ 5021 to 5050
Pennsylvania	42 Pa.C.S.A. §§ 9121 to 9148
Puerto Rico	34 L.P.R.A. § 18981 to 188lbb
Rhode Island	Gen.Laws 1956, §§ 12-9-1 to 12-9-35
South Dakota	SDCL 23-24-1 to 23-24-39
Tennessee	T.C.A. §§ 40-1001 to 40-1035
Texas	Vernon's Ann.Texas C.C.P. Art. 51.13
Utah	U.C.A. 1953, 77-30-1 to 77-30-28
Vermont	13 V.S.A §§ 4941 to 4969
Virgin Islands	5 V.I.C. §§ 3801 to 3829

Virginia	Code 1950, §§ 19.2-85 to 19.2-118
Washington	RCWA 10.88.200 to 10.88.930
West Virginia	Code, §§ 5-1-7 to 5-1-13
Wisconsin	W.S.A. 976.03
Wyoming	W.S. 1977, §§ 7-3-201 to 7-3-227

APPENDIX B

UNIFORM INTERSTATE FAMILY SUPPORT ACT

Alabama	Code 1975, §§ 30-3A-101 to 30-3A-906
Alaska	AS 25.25.101 to 25.25.903
Arizona	A.R.S. §§ 25-621 to 25-661
Arkansas	A.C.A. 9-17-101 to 9-17-902
California	West's Ann.Cal.Fam.Code §§ 4900 to 4976
Colorado	West's C.R.S.A. §§ 14-5-101 to 14-5-1007
Connecticut	C.G.S.A. §§ 46b-212 to 46b-213v
Delaware	13 Del. C. §§ 601 to 691
District of Columbia	D.C.Code 1981, §§ 30-341.1 to 30-349.1
Florida	West's F.S.A. §§ 88.0011 to 88.9051
Georgia	O.C.G.A. §§19-11-100 to 19-11-191
Hawaii	HRS §§ 576B-101 to 576B-902
Idaho	I.C. §§ 7-1001 to 7-1059
Illinois	S.H.A. 750 ILCS 22/100 to 22/999
Iowa	I.C.A. §§ 252K.101 to 252K.904
Kansas	K.S.A. 23-9,301 to 23-9,903
Kentucky	KRS 407.5101 to 407.5902
Louisiana	LSA-Children's Code arts. 1301.1 to 1308.2
Maryland	Code, Family Law §§ 10-301 to 10.359
Massachusetts	M.G.L.A. c.209D, §§ 1-101 to 9-902
Michigan	M.C.L.A. §§ 552.1101 to 552.1901
Minnesota	M.S.A. §§ 518C.101 to 518C.902
Mississippi	Code 1972, 93-25-1 to 93-25-117
Missouri	V.A.M.S. §§ 454.850 to 454.997
Montana	MCA §§ 40-5-101 to 40-5-197
Nebraska	R.R.S. 1943, §§ 42-701 to 42-751
Nevada	N.R.S. 130.0902 to 130.802
New Hampshire	RSA 546-B:l to 546-B:60
New Jersey	N.J.S.A. 2A:4-30.65 to 2A:4-30.122
New Mexico	NMSA 1978 §§ 40-6A-101 to 40-6A-903
New York	McKinney's Family Ct. Act §§ 580-101 to 580-905
North Carolina	G.S. §§ 52C-1-100 to 52C-9-902
North Dakota	NDCC 14-12.2-01 to 14-12.2-49
Ohio	R.C. §§ 3115.01 to 3115.59
Oklahoma	43 Okl.St.Ann. §§ 601-100 to 601-901
Oregon	See, ORS 110.300 to 110.441
Pennsylvania	23 Pa. C.S.A. §§ 7101 to 7901
Tennessee	West's Tenn.Code §§ 36-5-2001 to 36-5-2902
Texas	V.T.C.A. Family Code §§ 159.001 to 159.902
Utah	U.C.A. 1953, 78-45f-100 to 78-45f-901
Vermont	15B V.S.A. §§ 101 to 904

Virgin Islands	16 V.I.C. §§ 391 to 451
Virginia	Code 1950, §§ 20-88.32 to 20-88.82
Washington	West's RCWA 26.21.005 to 26.21.916
West Virginia	Code, 48B-1-101 to 48B-9-903
Wisconsin	W.S.A. 769.101 to 769.903

APPENDIX C

FUGITIVE FELONY ACT (UFAP WARRANTS)

18 United States Code section 1073, the Fugitive Felon Act, provides criminal penalties for unlawful flight to avoid prosecution, confinement, giving of testimony, or to avoid service of process. That section reads as follows:

> "Whoever moves or travels in interstate or foreign commerce with intent either (l) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or which, in the case of New Jersey, is a high misdemeanor under the laws of said State, or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by death or which is a felony under the laws of such place, or which in the case of New Jersey, is a high misdemeanor under the laws of said State, is charged, or (3) to avoid service of, or contempt proceedings for alleged disobedience of, lawful process requiring attendance and the giving of testimony or the production of documentary evidence before an agency of a State empowered by the law of such State to conduct investigations of alleged criminal activities, shall be fined not more than $5,000 or imprisoned not more than five years, or both.
>
> "Violations of this section may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed, or in which the person was held in custody or confinement, or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this

section is alleged to have been committed, and only upon formal approval in writing by the Attorney General or an Assistant Attorney General of the United States, which function of approving prosecutions may not be delegated.'"[1]

PRIMARY PURPOSE:

While 18 U.S.C. § 1073 is drawn as a penal statute and permits federal prosecution for its violation, the primary purpose of the Act is to permit the federal government to assist in the location and apprehension of fugitives from state justice (UFAP warrants). The Act does not supersede nor is it intended to provide an alternative for state extradition proceedings. The federal complaint charging unlawful flight will generally be dismissed once a fugitive has been apprehended and turned over to state authorities to await interstate extradition. *(United States* v. *McCord* (5th Cir. 1983) 695 F.2d 823, 826; *United States* v. *Thurman* (3d Cir. 1982) 687 F.2d 11; *United States* v. *Love* (S.D.N.Y. 1977) 425 F.Supp. 1248; *Beach* v. *State* (S.D.Cal. 1982) 535 F.Supp. 560, 562; *State ex rel. Middleman* v. *District Court* (Mont. 1951) 233 P.2d 1038.)

THE FEDERAL COMPLAINT UNLAWFUL FLIGHT TO AVOID PROSECUTION:

The complaint for unlawful flight to avoid prosecution is appropriate where there is probable cause to believe that the fugitive has fled and that his flight was for the purpose of avoiding prosecution and that he has moved or traveled in interstate or foreign commerce.[2] Requests for unlawful flight complaints should be made as soon as possible. While in theory it is not absolutely essential to the federal complaint (*Hett v. United States* (9th Cir. 1966) 353 F.2d 761, 763), state prosecution should have been commenced by complaint, warrant, indictment, or information prior to issuance of the federal complaint. However, it is not necessary that the flight itself occur prior to the institution of the prosecution. (*Lupino v. United States* (8th Cir. 1959) 268

1 For cases involving flight from prosecution for damaging or destroying any building or other real or personal property, see 18 United States Code section 1074.

2 Mere absence from the state of prosecution without an intent to avoid prosecution is not sufficient. (*In re King* (1970) 3 Cal.3d 226, 236, fn. 8.)

F.2d 799, cert. den. (1959) 361 U.S. 834.) Certified copies of the charging document should be delivered to the United States Attorney's Office. Prior to 1980, “UFAP" warrants were very infrequently issued in cases of parental kidnapping. This policy was based on the Department of Justice's interpretation of the federal kidnapping law's (18 U.S.C., § 1201) specific exception of cases involving the abduction of a minor child by a parent. However, in conjunction with the Parental Kidnapping Prevention Act of 1980 (28 U.S.C., § 1738A), the Congress specifically declared that 18 United States Code section 1073 applies to parental kidnapping and interstate or international flight to avoid prosecution for that crime (18 U.S.C., § 1073 note). The Department of Justice has established guidelines for issuing warrants in these cases which require independent and credible information that the kidnapped child is in a condition of abuse or neglect. (Beach v. State (S.D. GI.) 535 F.Supp. 560.)

UNLAWFUL FLIGHT TO AVOID CUSTODY OR CONFINEMENT AFTER CONVICTION:

The Fugitive Felon Act also covers flight for the purpose of avoiding custody or confinement. This would apply to inmates of jails and prisons, as well as to those on conditional liberty. In cases of conditional liberty, whether probation or parole, the evidence should indicate that the subject knew or believed that his conditional liberty was about to be revoked or was at least in jeopardy.

UNLAWFUL FLIGHT TO AVOID GIVING TESTIMONY:

A complaint may be authorized where a witness has fled the state to avoid giving testimony in a criminal proceeding which involves a felony. The criminal proceeding must actually have been instituted in state court. (*Durbin v. United States* (D.C. Cir. 1954) 221 F.2d 520.) Further, there should be substantial evidence to indicate that the intent was to flee in order to avoid the giving of testimony. Where all state remedies for securing the return of a witness have been

exhausted, the United States Attorney's Office should be contacted regarding the issuance of an unlawful flight complaint.

UNLAWFUL FLIGHT TO AVOID SERVICE OF PROCESS:

The Fugitive Felon Act was amended in 1970 to include flight to avoid service of process. The Act now prohibits interstate flight "to avoid service of, or contempt proceedings for alleged disobedience of, lawful process requiring attendance and the giving of testimony or the production of documentary evidence before an agency of a state empowered by the law of such state to conduct investigations of alleged criminal activities."

APPENDIX D

SPECIAL STATE REQUIREMENTS FOR EXTRADITION

Individual states and territories have introduced special requirements with which the demanding jurisdiction must comply to facilitate extradition. These additional requirements are as follows:

State	Requirements
Alabama	• Where extradition is sought in a matter involving non-fugitivity, extradition packages must include an *indictment* Code 1975, § 15-9-34.
Alaska	• When the fugitive is *charged,* but not *convicted,* probable cause must be shown by one of the following: a) Properly certified indictment, preliminary hearing finding or order, or any document in which a judicial officer has found probable cause; b) an affidavit made before a judicial officer (not a notary). See AS 12.70.020.
Arizona	• Identification required – photograph with affidavit and/or certified fingerprints. (A.R.S. 13-3845.)
Arkansas	• Affidavit of probable cause; photos and fingerprints.
California	• Identification. Criminal nonsupport cases must contain UIFSA/URESA affidavit tracing the procedural history of the case in support of an allegation that civil remedies have been attempted or that they would be futile.
Colorado	• Identification.
Connecticut	• Showing of probable cause. Photograph and/or fingerprints required for identification. Specific designation of agent (name and title). Female agent for female fugitive. • Private transport services named as sole agent will not be honored.
Delaware	• Showing of probable cause.
District of Columbia	• Showing of probable cause.
Florida	• If extradition is based in whole or in part on a conviction, the package must include a judgment signed by a judge. If this document is not available, an affidavit by a judge as to the judgment and sentence will suffice. Showing of probable cause.
Georgia	• Identification.

Guam	• Documents must include felony arrest warrant. Indictment (when issued). Showing of probable cause. Identification.
Idaho	• Documents must include the warrant. Statement of probable cause.
Illinois	• Photographs with affidavit of verification and/or fingerprints
Iowa	• Documents must include the warrant. Identification.
Kansas	• Warrant must be based on the charging document. Identification. Affidavit or judicial finding of probable cause. Female agent for female fugitive.
Kentucky	• Where extradition is based on a violation of terms of probation or parole, documents must include a copy of the judgment and sentence and a statement as to how the terms were violated. Where the request is based upon a nonsupport charge, and where URESA/UIFSA remedies have not been attempted, prosecutor's URESA/UIFSA affidavit should state reasons why URESA/UIFSA would be of no avail. Female agent for female fugitive by Governor's policy.
Maine	• Identification. Showing of probable cause. See 15 M.R.S.A. § 203.
Maryland	• Identification. Female agent for female fugitive. Copy of statute violated.
Michigan	• Fingerprint or photograph identification.
Minnesota	• None.
Mississippi	• Identification.
Missouri	• Identification. Showing of probable cause made before a magistrate (except with indictments).
Montana	• Warrant and statute violated must be included.
Nevada	• Warrant must be based on the charging document. Identification (photo and fingerprints preferred).
New Hampshire	• If the documents do not contain an *indictment* the warrant *must* contain a determination of probable cause. Identification.
New Jersey	• Identification. Showing of probable cause. Warrant must be based on the charging document. Female agent named for female fugitive; agents must be designated by name and title; no private transport companies may be named. Copy of statute violated. • Include copy of statute that allows court clerk or other to act as magistrate who administers oath, takes sworn statements and issues warrants

	• NJ DOC inmates: Criminal proceedings of any kind may not be conducted via video teleconferencing.
New Mexico	• Warrant must be based on the charging document. The package or warrant *must* include a finding of probable cause. Female agent named for female fugitive.
New York	• Warrant must be based on the charging document. Include copies of statutes violated. Copy of statute that allows for clerks or commissioners to act in capacity of magistrates, if applicable. Identification. Specific designation of agent *by name* and title. Female agent named for female fugitive.
North Carolina	• Warrant must be based on the charging document. Designate agent by name. If transport services are used, must supply list of names.
Ohio	• Probable cause required – if not by judge, provide statement within prosecutor's supporting affidavit or in separate statement. • Warrant based upon the charging document. Female agent named for female fugitive. • Identification required – certified photo and/or fingerprints; detailed physical description, SSN; DOB; indentifying marks/tattoos. • Copy of relevant criminal statute.
Oklahoma	• Female agent named for female fugitive.
Puerto Rico	• Specific designation of agents by *name* and *title.* Female agent named for female fugitive. Photo and fingerprints when available. Copy of statute violated. Showing of probable cause.
Rhode Island	• Warrant must be based on the charging document. Female agent named for female fugitive.
Tennessee	• Identification (for extradition and detainer).
Texas	• Warrant must be based on the charging document. Female agent named for female fugitive. Specific designation of agent by *name* and title.
Utah	• No.
Vermont	• The demanding state must indicate in the cover letter the location of the fugitive in Vermont. Identification (fingerprints and/or photo preferred). Probable cause affidavit if no indictment.
Virgin Islands	• The demanding state must indicate in the cover letter the location of the fugitive in the Virgin Island
Virginia	• No special requirements
Wisconsin	• Extradition documents must include a showing of probable cause or an arrest warrant issued by a judge or magistrate.
Wyoming	• Yes, per Syo. Stat. Ann. Sec. 7-3-201 et seq.

APPENDIX D-1

ARRAIGNMENT OF FUGITIVE SIMULTANEOUSLY WITH LOCAL CHARGES

Some states and territories arraign a subject as a fugitive simultaneously with arraignment on any local criminal charges. Some states do not. With others, it varies in each judicial district.

Alabama	• No law
Arkansas	• Yes
California	• Within the discretion of each jurisdiction. Fugitive charges may be tolled until local charges are resolved (Pen. Code, § 1553.1, subd. (b))
Connecticut	• Varies from judicial district; within the State's Attorney direction upon arraignment
Illinois	• Yes. (725 ILCS 225/19)
Louisiana	• No.
Maine	• Yes.
Michigan	• Yes, per MCL 780.18
Minnesota	• Varies in each jurisdiction. Minn. Stat. § 62919 allows local charges to be resolved first before fugitive is extradited.
Montana	• Yes. (46-30-202)
Nevada	• Yes
New Hampshire	• Yes.
New Jersey	• 90 day time limit starts when subject refuses to waive, but may have fugitive charge or governor's warrant held in abeyance.
New York	• Varies, based on local policy.
North Carolina	• Yes.
Utah	• No.
Virginia	• Left to the determination of local prosecutors in each jurisdiction.
Wyoming	• Yes, Wyo. Stat. Ann. § 7-3-219.

APPENDIX D-2

EXPIRATION OF GOVERNOR'S REQUISITIONS OR WARRANTS FOR EXTRADITION

Individual states and territories allow governor's warrants for arrest and rendition to expire, while some states and territories do not.

Alabama	No
Arkansas	No
California	No, but when new governor is elected, governor's warrant must be re-issued.
Connecticut	No
Illinois	No
Louisiana	No
Maine	Yes, upon change of governor.
Michigan	No
Minnesota	No
Montana	No
Nevada	No
New Hampshire	No
New Jersey	No
New York	No, but governor may issue another warrant when deemed proper to do so.
North Carolina	No
Wyoming	No law on issue.

APPENDIX D-3

GOVERNOR'S WARRANTS TREATED AS FORMAL DETAINERS OR HELD IN ABEYANCE

Individual states and territories treat governor's warrants as formal detainers or hold them in abeyance while local charges or sentencing is completed, while others do not.

Alabama	Yes
Arkansas	No, an interstate detainer would be required instead.
California	No, governor's warrant is returned, and receiving state must lodge formal detainer.
Connecticut	No
Illinois	Yes (725 ILCS 225/19)
Louisiana	Yes, governor's warrant follows inmate as a formal detainer.
Maine	No.
Michigan	Yes, as a formal detainer.
Minnesota	Yes, as a formal detainer.
Montana	Yes, provided the fugitive has a sentence of five years or less.
Nevada	No, governor warrant is returned and the requesting state must begin IAD process unless it is Louisiana or Mississippi, upon which an executive agreement will be used.
New Hampshire	Yes
New Jersey	No, a formal detainer must be filed by the requesting jurisdiction. The NJ DOC may hold a governor's warrant in the file as reminder that one exists, but it is not considered a detainer.
New York	No, but warrants are held in abeyance and tracks the fugitive/inmate until release.
North Carolina	No.
Utah	Held in abeyance.

APPENDIX D-4

USE OF PRIVATE TRANSPORT COMPANIES AS EXTRADITION AGENTS

Individual states and territories will allow private transport companies to be used as extradition agents, while others do not.

Alabama	Yes.
Arkansas	No.
California	No, prohibited by law for demand by California Governor. (Pen. Code § 1558.) However, California will release fugitive to private company nominated by governor of another state.
Connecticut	No.
Illinois	Yes, but for DOC inmates. (Attorney General Opinion 05-004/May 13, 2005)
Louisiana	No, but sheriff may designate agent for pick-up after paperwork is complete.
Maine	Yes.
Michigan	Yes.
Minnesota	Preference is to identify a specific person as agent.
Montana	Yes.
Nevada	Yes.
New Hampshire	No.
New Jersey	Not allowed to be named in governor's warrants and requisitions, but counties and DOC routinely uses them in long distance pick-ups.
New York	No, private transport companies are not authorized agents and may not be named as agents in New York governor's requisitions. But other states or territories may name private transport companies as agents for New York governor's warrant.
North Carolina	Yes, but if used, must provide name of private agent along with signature.
Utah	No.
Wyoming	Yes.

APPENDIX D-5

RELEASE OF FEDERAL PRISONER TO DEMANDING STATE

Individual states and territories allow release of federal inmates to demanding states or territories without formal extradition proceedings, while others do not. (See Bureau of Prisons Policy Statement 1004 (6/28/02) at www.bop.gov)

Alabama	No.
Arizona	Yes, to serve existing sentence or for parole or probation violation per BOP policy.
Arkansas	No.
California	Yes, to serve existing sentence or for parole or probation violation per BOP policy.
Connecticut	No formal extradition is required per BOP policy.
Florida	Yes, to serve existing sentence or for parole or probation violation per BOP policy.
Illinois	Yes
Kansas	Yes, to serve existing sentence or for parole or probation violation per BOP policy.
Louisiana	Yes, federal prison transfers handled entirely by the federal institution and the demanding state.
Maine	Yes.
Michigan	Yes, for violations of parole and probation, as well as open charges.
Minnesota	Issue has not been addressed by the courts, but federal inmates have been turned over to the local jurisdiction at times.
Montana	No federal prisons in Montana.
Nevada	
New Hampshire	No federal prison in New Hampshire.
New Jersey	Yes, provided that the matter is for violations of parole or probation per BOP policy.
New York	Yes, to serve existing sentence or for parole or probation violation per BOP policy.
North Carolina	Yes, for service of sentence or for parole or probation violation per BOP policy.
South Carolina	Yes, to serve existing sentence or for parole or probation violation per BOP policy.
Virginia	Yes, to serve existing sentence or for parole or probation violation per BOP policy.
Utah	No.
Wisconsin	Yes, to serve existing sentence or for parole or probation violation per BOP policy.
Wyoming	No federal prisons.

APPENDIX E

NUMBER OF EXTRADITION PACKAGES REQUIRED

When making a request for extradition, the following number of extradition packages should be submitted. One copy must be kept by the demanding governor, and the others are required by the individual states. **When there are codefendants, there must be a complete set for *each* defendant**.

State	Number of Packages
Alabama	Original and 1 copy
Alaska	Original and 2 copies
Arizona	Original and 2 copies
Arkansas	3 Originals and 3 copies
California	Original and 1 copy
Colorado	Original and 2 copies
Connecticut	Original and 2 copies
Delaware	Original and 3 copies
District of Columbia	Original and 2 copies
Florida	Original and 2 copies
Georgia	2 Originals and 1 copy
Guam	1 Original and 3 copies
Hawaii	Original and 2 copies
Idaho	2 Originals and 1 copy
Illinois	1 Original and 2 copies
Indiana	Original and 2 copies
Iowa	Original and 2 copies
Kansas	Original and 2 copies
Kentucky	Original and 2 copies
Louisiana	Original and 2 copies
Maine	Original and 1 copy
Maryland	Original and 2 copies
Massachusetts	Original and 3 copies
Michigan	Original and 2 copies
Minnesota	2 Originals and 2 copies
Mississippi	Original and 2 copies
Missouri	Original and 2 copies
Montana	Original and 2 copies
Nebraska	Original and 2 copies
Nevada	Original and 1 copy
New Hampshire	Original and 2 copies
New Jersey	Original and 1 copy
New Mexico	Original and 2 copies
New York	Original and 1 copy
North Carolina	Original and 1 copy
North Dakota	2 Originals and 2 copies
Ohio	Original and copy
Oklahoma	Original and 1 copy
Oregon	Original and 2 copies

Pennsylvania	Original and 1 copy
Puerto Rico	Original and 3 copies
Rhode Island	Original and 4 copies
South Carolina	Original and 3 copies
South Dakota	Original and 2 copies
Tennessee	Original and 2 copies
Texas	Original and 2 copies
Utah	Original and 1 copy
Vermont	Original and 4 copies
Virginia	1 Original and 1 copy
Washington	Original and 2 copies
West Virginia	Original and 2 copies
Wisconsin	Original and 2 copies
Wyoming	2 Originals and 2 copies
U.S. Department of State	Original and 4 copies

APPENDIX F

PROCEDURES FOR REQUESTING INTERNATIONAL EXTRADITION

We offer this pamphlet to our law enforcement colleagues as an aid in obtaining the extradition of fugitives from foreign countries.

CONTACTING OIA

As soon as you have information that a fugitive is located in a foreign country, your first step should be to contact the Office of International Affairs. Extradition treaties often allow for provisional arrest of the fugitive if there is a danger of flight, even before the full packet of extradition documents has been prepared. OIA attorneys can make the necessary arrangements.

It is critical that OIA be the conduit for any communication to the foreign country. Contacts outside the supervision of OIA will almost certainly create serious problems in the specific case involved and can even damage our entire law enforcement relationship with the foreign country. In addition, any direct contact by Federal or State prosecutors, investigators, or other police authorities with individuals - even U.S. citizens- located in foreign countries exposes the person making the contact to civil or criminal liability in the foreign country.

You can contact OIA by calling (202) 514-0000, or after hours: (202) 514-5000, and asking to speak with the attorney assigned to the country where you believe the fugitive is located.

In your initial consultation with an OIA attorney a preliminary determination will be made whether the crime committed is an extraditable offense under the treaty and whether a request for provisional arrest is warranted. When you call, the attorney will want to know (1) the best information available as to the fugitive's location, (2) the citizenship of the fugitive, and (3) the crime committed.

If provisional arrest is in fact desired, your office will need to fax us the following information:

1. State or Federal District requesting extradition.
2. Name of the fugitive (including aliases)
3. Identifying information:
   Citizenship:
   Date of Birth:
   Height:
   Weight:
   Sex:
   Eye Color:
   Hair Color:
   Race:
   Passport:

Other identifying information:
(identifying marks, driver's license, etc.)

4. Present location (the best information available as to the fugitive's whereabouts.)
5. Facts of the case (use narrative rather than indictment language and indicate the basis of knowledge.)
6. Criminal offense(s) for which extradition is sought and statutory citation(s).
7. Verification that the applicable statute of limitations does not bar prosecution for those offenses.
8. Details of indictment or complaint (date, court file number, name and location of court, and judge's name.)
9. Details of arrest warrant (date, court file number, name and location of court, and judge's name.)
10. Name, title, address, phone number, and signature of official authorizing extradition request.

NOTE: The requesting State or Federal District is responsible for payment of all expenses, including the cost of document translation and transportation of the fugitive and escorts.

EXTRADITION PACKAGE

Once the fugitive has been arrested, the United States has a deadline, specified by the Treaty, by which it must submit all of the documents required under the Treaty. If we fail to meet this deadline, the requested country will release the fugitive. The deadline is often very tight, especially since the documents must be reviewed in OIA and translated before they are submitted to the foreign country. The documents required vary by country but generally follow the outline below.

PRELIMINARY NOTE: The prosecutor's affidavit must without exception be sworn before a judge. If the other affidavits contained in the package are not sworn before a judge the prosecutor must, in his affidavit, allege that such other affidavits were executed before persons authorized to administer oaths in the jurisdiction involved. Additionally, the package must be properly certified. If the request is from a Federal District, this office will arrange for a certifying cover letter to be signed by the Attorney General. If the request is from a state or a political subdivision of a state to a continental European civil law country, a letter similar to those attached to requests for interstate rendition must attached with ribbons to the document package.

PROSECUTOR'S AFFIDAVIT

The prosecutor's affidavit is the single most important extradition document. It is a sworn statement of the facts and procedural history of the case which is prepared by the prosecutor. It also identifies the offense(s) for which extradition is sought and the applicable provisions of the U.S. law. Finally, it lists the documents submitted in support of the extradition request, identifies the person to be extradited, and provides information regarding citizenship and location. It should generally contain the following:

1. For European civil law countries, identification of the affiant prosecutor should be by name and job titled only.

2. Brief but complete statement of the facts, using narrative rather than indictment language. This should also include an indication of how this information was obtained.

3. The procedural history of the case, including dates of indictment or complaint and the date and judge signing the arrest warrant(s).

4. Identification of offenses and penalties, including:

   a. Full text of relevant statutes (may be appended as exhibits).
   NOTE: Include statutory language only. Do not include annotations.

   b. Statement that statutes are still in force.

5. Showing that statute of limitations does not bar prosecution.

6. If the extradition is sought for the fugitive to face trial, the prosecutor's affidavit should, for each charge, (1) list the elements, and (2) state the facts showing each element.

7. If the fugitive has already been convicted and is sought to serve the remainder of a sentence, the outcome of the trial should be described and a showing made of the time remaining to be served.

8. Information which will allow the foreign court to identify the fugitive as the person sought and the perpetrator of the crime. (Photographs, fingerprints, and witness descriptions may be attached as exhibits.)

9. Showing of citizenship of fugitive.

10. Reference to and authentication of all exhibits and other affidavits.

EXHIBITS

Exhibits should be marked for easy reference and identified and authenticated in the prosecutor's affidavit. The exhibits may include any documents used to support the prosecutor's affidavit. At a minimum, the following should be attached as exhibits:

1. INDICTMENT OR COMPLAINT. The indictment or complaint used as a basis for the provisional arrest request must be included in the full extradition packet, together with any superseding indictment(s). If the complaint or indictment, which formed the basis of the provisional arrest request has been superseded, this should be explained in the prosecutor's affidavit. If the original is not used because it is required to be on file with the clerk of the court, this, too, should be explained in the prosecutor's affidavit.

2. ARREST WARRANT. The arrest warrant or equivalent used as a basis for the provisional arrest must be provided. If a subsequent arrest warrant or equivalent is issued, it must also be furnished and the reason for its issuance explained in the prosecutor's affidavit. If the original is not used because it is required to be on file with the clerk of the court, this, too, should be explained in the prosecutor's affidavit.

3. AFFIDAVITS OF INVESTIGATING AGENT AND OTHER WITNESSES. These exhibits should support the allegations made in the prosecutor's affidavit. Please note that if the request is to a continental European or other civil law country, hearsay is acceptable. Therefore, for these countries, the investigating agent may relate the observations of other witnesses.

4. If the extradition is sought for the fugitive to serve the remainder of a sentence already imposed, the following should also be attached as exhibits:

   a. Authenticated Judgment and Commitment Order, or its equivalent.

   b. Authenticated documentation of prison time not yet served. (This may be established through an affidavit by the prison warden.)

The attorneys at OIA are available for consultation during the preparation of an extradition package and for reviewing draft documents. When the final packet is complete, the Governor's cover letter and State Seal should be attached in State cases. In both Federal and State cases, two original certified sets and three copies of the extradition package should be forwarded to the Office of International Affairs.

APPENDIX G

ENFORCEMENT OF PRESIGNED WAIVERS OF EXTRADITION

Alaska	→	No law on the subject; Attorney General's policy disfavors seeking Enforcement.
Alabama	→	No law on the subject.
Arizona	→	Yes. (Statute - Crim. Code, § 13-3865.01)
Arkansas	→	Yes.
California	→	Yes. (Pen. Code, § 1555.2)
Colorado	→	Yes. (C.R.S. 16-19-126.5)
Connecticut	→	No law
Delaware	→	Yes. (*Reed v. State* (Del. 1969) 251 A.2d 549)
District of Columbia	→	No law. Policy disfavors enforcement
Florida	→	Yes. (Statute - F.S.A. § 941.26(3).
Georgia	→	No law on the subject; depends on the judge.
Guam °	→	No law. Courts tend to favor enforcement.
Hawaii	→	Yes. (Statute - H.R.S. § 832-25)
Idaho	→	No law specifically on the subject, but policy favors since most Idaho courts impose such conditions.
Illinois	→	Yes (Attorney General Opinion 84-005), but may depend on judge
Indiana	→	No law on subject; but policy and practice favors enforcement.
Iowa	→	No law on the subject; policy disfavors.

Kansas	→	Yes. (*Hunt v. Hand* (Kan. 1960) 352 P.2d 1)
Kentucky	→	No law on the subject; Attorney General's policy favors seeking enforcement
Louisiana	→	Yes. (Statute - Art. 273, Code of Crim. Proc.)
Maine	→	Yes. (Statute - 15 M.R.S.A., § 226)
Maryland	→	Yes. (*White v. Hall* (Md. 1972) 291 A.2d 694)
Massachusetts	→	No law.
Michigan	→	Yes. (M.C.L.A. 780.25(a))
Minnesota	→	Yes. (*State ex rel. Swyston v. Hedman* (Minn. 1970) 179 N.W.2d 282; State v. Tahash (Minn. 1962) 115 N.W.2d 676)
Mississippi	→	Unknown.
Missouri	→	No law; practice disfavors enforcement.
Montana	→	Yes, for the most part, but some judges do not honor them. (Statute - MCA, § 46-30-229; see also *Swartz v. Woodahl* (Mont. 1971) 487 P.2d 300)
Nebraska	→	Yes. (*State v. Lingle* (Neb. 1981) 308 N.W.2d 531)
Nevada	→	Yes. (N.R.S. 179.22 § 3)
New Hampshire	→	Yes. (R.S.A. 612.5-a)
New Jersey	→	Yes, but some counties may not enforce them. (*State v. Maglio* (N.J. 1988) 459 A.2d 1209; *State v. Arundell* (N.J. 1994) 650 A.2d 845.) May include presigned waiver as a condition of parole.
New Mexico	→	Unknown.
New York	→	No, except in the case of the Interstate Compact on Adult Supervision, Executive Law § 259-m and 259-mm.
North Carolina	→	No law; but policy and informal Attorney General Opinion favors enforcement.
North Dakota	→	No law. Policy favors since North Dakota courts and parole authorities impose extradition waivers as release conditions.
Ohio	→	No law. Depends on the judge.

Oklahoma	→	Yes. (*Wright v. Page* (Ok. 1966) 414 P.2d 570)
Oregon	→	Yes. (ORS 133.843)
Pennsylvania	→	Yes. (Pa C.S.A. 42 § 9146.1)
Puerto Rico	→	No law. Prosecutors seek enforcement.
Rhode Island	→	No law.
South Carolina	→	Yes, by Executive Order.
South Dakota	→	No law.
Tennessee	→	Yes. (Attorney General opinion, No. 589)
Texas	→	Yes. (*Ex parte Johnson* (Tex. 1981) 610 S.W.2d 757)
Utah	→	Yes, U.C.A. 77-3-25.
Vermont	→	No law.
Virginia	→	Does not recognize presigned waivers
Virgin Islands	→	No law.
Washington	→	Yes. RCW 10.88.415.
West Virginia	→	Yes. W.Va Code § 5-1-11c.
Wisconsin	→	No.
Wyoming	→	No law. Depends on judge.

APPENDIX H

EXTRADITION TIME LIMITS

The number of days available to perfect a governor's warrant varies in each state. The following table is used by the Office of the Attorney General as a general guide to determine the maximum number of days in each state, before the fugitive charge will be dismissed.

State		Number of Days
Alabama	→	90 (from arrest)
Alaska	→	90 (from arrest)
Arizona	→	90
Arkansas	→	Reasonable standard
California	→	90
Colorado	→	90
Connecticut	→	90
Delaware	→	90
Florida	→	90 (from arrest)
Georgia	→	90 (from arrest)
Guam	→	60 (from arrest) Extensions granted for special circumstances.
Hawaii	→	90 (from arrest)
Idaho	→	90
Illinois	→	30 days, with extension granted up to 60 days
Indiana	→	90 (Vigo County allows 30 days from date of arrest).
Iowa	→	90
Kansas	→	90

Kentucky	→	90
Louisiana	→	30 days from arrest to *start* of proceedings, then up to 90
Maine	→	60 days with a 60 day extension.
Maryland	→	90
Massachusetts	→	90 (from arrest)
Michigan	→	90
Minnesota	→	30 days, with possible extension to maximum 90 days
Mississippi	→	90
Missouri	→	90
Montana	→	90
Nebraska	→	60, but 90 in special circumstances
Nevada	→	90
New Mexico	→	60 (except 30 in Santa Fe County)
New Hampshire	→	90
New Jersey	→	90 (from arraignment and refusal to waive)
New York	→	90 (from arrest)
North Carolina	→	90 (from arrest)
North Dakota	→	30 with 60 day extension
Ohio	→	30 then up to 60 more (Licking County allows 30)
Oklahoma	→	90
Oregon	→	45 days (extensions granted upon showing of good cause)
Pennsylvania	→	90

Puerto Rico	→	90
Rhode Island	→	90
South Carolina	→	90
South Dakota	→	90
Tennessee	→	90
Texas	→	90 if in custody; no time limit usually if on bail or bond
Utah	→	30 then up to 60 more
Vermont	→	30 with 60 day extension
Virginia	→	30 days; 60 day extension upon request, but not automatic
Washington	→	90
Washington D.C.	→	30
West Virginia	→	30, ***then*** 60 more if paperwork started
Wisconsin	→	90 (from arrest)
Wyoming	→	30 ***then*** 60 more if paperwork started

NOTE: The time limits may run from the date of arrest, date of arraignment, or date that identification is established. Also, an individual jurisdiction in a state will usually have the discretion to limit the number of days to a minimum; therefore, the above maximum time limits should be used as general guidelines only.

APPENDIX I

ARRAIGNMENT AND TAKING WAIVER[1]

1. Case called.
2. "Is your true name _____?"
3. "You have been arrested for/charged with being a fugitive from the justice of the State of _____ based on charges of _____ pending against you in _____ County in that state. The State of _____ has demanded your return to stand trial/complete your sentence on those charges."
4. "Do you understand this charge and the reason that you are in custody?"
5. Do you understand that you have a right to have an attorney present at all stages of these proceedings, including this arraignment, and that you are entitled to court-appointed counsel without charge if the court determines that you are unable to afford private counsel?"[2]
6. "Do you desire or are you represented by counsel?"
7. "Do you have funds to employ counsel?"
8. Appoint public defender/private counsel and provide a copy of the fugitive complaint and attachments.
9. "Do you admit that you are the person charged in the State of with the crime of_?" If denial, set date for identity hearing within 10 days.
10. "Do you understand that before you may be returned to that state, you have the right to require the issuance of a formal Governor's warrant of extradition?"
11. "Do you understand that you will be given an opportunity to challenge the legal sufficiency of the Governor's warrant if you desire to do so before being sent back to the State of _?"
12. "Do you wish to waive extradition at this time?"
13. If no waiver, continue case for 30 days and consider bail.[3]

---

1 This suggested arraignment was modeled after Chapter 2 and Appendix A, Sample Oral Form 2 of the "Bench Book: Misdemeanor Procedure," California College of trial Judges (1971) with appropriate modifications. The author greatly acknowledges the assistance of the Honorable Sheldon H. Sloan, Superior Court, Los Angeles County.

2 Regarding whether the fugitive has the right to counsel at this stage, see page 46, fn. 80, of the manual.

3 A fugitive may be granted bail only if the offense charged in the demanding state is not punishable by death or life imprisonment or the fugitive is not accused of escape or absconding from parole. (See pp. 51-52.)

14. If waiver, "Has the district attorney prepared the waiver form? (See Form 6.)

15. "Do you understand that by signing this form, you give up the right to contest your return to the State of and require the issuance of a formal Governor's warrant?"

OPTIONAL: "Furthermore, do you understand that you will be returned to the State of _____ in the custody of agents from that state and that once you are in that state, you may be tried on any other charges pending against you there? However, you may not be sued civilly for any damages resulting from the crime charged until you are given a reasonable opportunity to leave that state."

16. "Keeping in mind all that I have said to you, do you now wish to sign the waiver of extradition?"

17. "Do you do so freely and voluntarily and without promise of reward, leniency or immunity?"

18. "Has anyone threatened you or any member of your family to get you to sign a waiver?"

19. "Have you read the waiver form and do you understand it?"

20. "Do you freely and voluntarily wish to sign the form?"

21. "Sign the form."

22. "Further proceedings on this matter will be held on (e.g. 10 days) in Division _____ at _____."[4]

23. "Bail is set at _____."[5]

---

4 Further court proceedings may not be necessary prior to the fugitive's release to agents of the demanding state. UCEA section 25-A provides that when the waiver is executed, the magistrate shall order the law enforcement officer having custody of the fugitive to deliver him forthwith to agents of the demanding state. If the court does not wish to have the fugitive returned to court for release to those agents pursuant to the waiver, the court should so advise the law enforcement officer having custody of the fugitive and should request that the court be notified when the fugitive has been delivered over. When the case is called on the date set, the court should simply order dismissal of the fugitive complaint.

5 Following a waiver bail may only be set with the concurrence of the prosecuting attorney and officials of the demanding state. Without such concurrence, the accused must be remanded.

APPENDIX J

ARRAIGNMENT ON GOVERNOR'S WARRANT[1]

1 . Case called.

2. "Is your true name _____"

3. "Demand has been made for your return to the State of _____ to stand trial/complete your sentence for the crime(s) of _____ in _____ County of that state. The Governor of (asylum state) has ordered that you be returned in accordance with that demand."

4. "Do you understand the charge and the reason you are in custody?"

5. "Do you understand that you have the right to have an attorney present at all stages of these proceedings, including this arraignment?

6. "Are you represented by counsel?"

7. "Do you desire the assistance of counsel?"

8. "Do you have funds to employ counsel?

9. If not, appoint public defender or other attorney and provide a copy of the Governor's warrant and any attachments.

10. "Do you wish to challenge the legality of the extradition warrant?"

11. ***If challenge***: "Further proceedings in this matter will be heard on (reasonable time to file e.g., 10 days) during which time you may file a petition for writ of habeas corpus in the superior court."

12. ***If no challenge***: "Do you admit that you are the person named in the warrant?"

13. "Defendant is remanded to custody for the purpose of delivery to the designated agents of the State of _____. The district attorney/law enforcement officer is instructed to notify the appropriate persons in the State of (demanding state) that they may appear to take custody of the fugitive."

---

1 This suggested arraignment was modeled after Chapter 2 and Appendix A, Sample Oral Form 2 of the "Bench Book: Misdemeanor Procedure," California College of Trial Judges (1971) and UCEA section 10.

APPENDIX K

INTERSTATE AGREEMENT ON DETAINERS

Alabama	Code 1975, § 15-9-81
Alaska	A.S. 33.35.010 to 33.35.040
Arizona	A.R.S. §§ 31-481, 31-482
Arkansas	A.C.A §§ 16-95-101 to 16-95-107
California	West's Ann. Penal Code §1389 to 1389.8
Colorado	West's C.R.S.A. §§ 24-60-501 to 24-60-507
Connecticut	C.G.S.A. §§ 54-186 to 54-192
Delaware	11 Del.C. §§ 2540 to 2550
D.C.	D.C. Code 1981, §§ 24-701 to 24-705
Florida	West's F.S.A. §§ 941.45 to 941.50
Georgia	O.C.G.A,. §§ 42-6-20 to 42-6-25
Hawaii	HRS §§ 834-1 to 834-6
Idaho	I.C. §§ 19-5001 to 19-5008
Illinois	S.H.A. 730 ILCS 5/3-8-9
Indiana	West's A.I.C. 35-33-10-4
Iowa	I.C.A. §§ 821.1 to 821.8
Kansas	K.S.A. 22-4401 to 22-4408
Kentucky	KRS 440.450 to 440.500
Maine	34-A.M.R.S.A. §§9601 to 9609
Maryland	MD Code 1999, C.S.A., §§ 8-401 to 8-417
Massachusetts	M.G.L.A. c. 276 App., §§ 1-1 to 1-8
Michigan	M.C.L.A. §§ 780.601 to 780.608
Minnesota	M.S.A. § 629.294
Missouri	V.A.M.S. §§ 217.490 to 217.520
Montana	MCA 46-31-101 to 46-31-204
Nebraska	R.R.S. 1943, §§ 29-759 to 29-765
Nevada	N.R.S. 178.620 to 178.640
New Hampshire	RSA 606-A:1 to 606-A:6
New Jersey	N.J.S.A. 2A:159A-1 to 2A:159A-15
New Mexico	N.M.S.A. 1978, § 31-5-12
New York	McKinney's CPL § 580.20
North Carolina	G.S. §§ 15A-761 to 15A-767
North Dakota	NDCC 29-34-01 to 29-34-08
Ohio	R.C. §§ 2963-30 to 2963.35
Oklahoma	10 Okl.St.Ann. §§ 1345 to 1349
Oregon	ORS 135.775 to 135.793
Pennsylvania	42 Pa.C.S.A. §§ 9101 to 9108
Rhode Island	Gen. Laws 1956, §§ 13-13-1 to 13-13-8
South Carolina	Code 1976, §§ 17-11-10 to 17-11-80
South Dakota	SDCL 23-24A-1 to 23-24A-34
Tennessee	West's Tenn. Code §§ 40-31-101 to 40-31-108

Texas	Vernon's Ann. Texas C.C.P. Art. 51.14
U.S.	18 U.S.C.A.App.
Utah	U.C.A. 1953, 77-29-5 to 77-29-11
Vermont	28 V.S.A. §§ 1501 to 1509, 1531 to 1537
Virginia	Code 1950, §§ 53.1-210 to 53.1-215
West Virginia	Code, 62-14-1 to 62-14-7
Wisconsin	W.S.A. 976.05, 976.06
Wyoming	W.S. 1977, §§ 7-15-101 to 7-15-105

APPENDIX L

AGREEMENT ON DETAINERS

Procedure Used When Inmate Initiates

Request for Disposition of Charges Pending in Receiving State

Step	Action Initiated by	Action	Form Number
1	RECEIVING STATE PROSECUTOR	Detainer lodged with warden.	I
2	WARDEN	Notifies inmate of pending charges.	I
3	INMATE	Requests disposition of charges.	I
4	WARDEN	Certifies inmate's status and offers temporary custody. Attaches Forms III and IV to Form II and sends by registered or certified mail, return receipt requested, to prosecutor. The 180-day time limitation starts the day the return receipt is signed.	III IV
5	RECEIVING STATE PROSECUTOR	Accepts offer of temporary custody.	
6	RECEIVING STATE PROSECUTOR	Requests agent's authority to act for receiving state.	VI
7	AGREEMENT ADMINISTRATOR	Authorizes agent to act for receiving state. Forwards copy to warden, DOC accounting office, and returns 2 copies to prosecutor.	VI
8	PROSECUTOR	Following sentencing, notices detainer administrator of disposition of charges.	IX

APPENDIX L

AGREEMENT ON DETAINERS

Procedure Used When Receiving Prosecutor Initiates

Process for Bringing Inmate to Trial

Step	Action Initiated By	Action	Form Number
1	RECEIVING STATE PROSECUTOR	Detainer lodged with warden.	
2	WARDEN	Notifies inmate of pending charges.	I
3	RECEIVING STATE PROSECUTOR	Requests temporary custody of inmate for purpose of bringing to trial.	V
4*	WARDEN	Offers inmate the opportunity to invoke right to speedy trial under Article III by signing Form II. If inmate does not sign Form II, contact local prosecutor to arrange court hearing.	
5	SENDING STATE PROSECUTOR	Takes inmate to court for "Cuyler hearing"; furnishes court with copy of Form V and supporting documents (provided by correctional officials).	
6	COURT	Conducts arraignment (similar to extradition hearing). Advises inmate of right to counsel and to habeas corpus. If habeas corpus denied (or not sought by inmate): court authorizes delivery of inmate to receiving state –OR- court stays delivery to allow for habeas corpus to higher court.	
7	WARDEN	After court proceedings conclude, and 30 days have passed from the receipt of the prosecutor's request for temporary custody, certifies inmate's status and offers temporary custody.	III IV
8	RECEIVING STATE PROSECUTOR	Requests agent's authority to act for receiving state.	VI
9	AGREEMENT ADMINISTRATOR	Authorizes agent to act for receiving state. Forwards copy to warden in sending state, copy to DOC accounting office, two copies to receiving state prosecutor.	VI

10	AGENT	With proper authority and credentials, receives custody of inmate; returns to receiving state. Inmate must be brought to trial within 120 days of arrival in the receiving state.	
11	RECEIVING STATE PROSECUTOR	Following sentencing, notifies Agreement Administrator of disposition of charges.	IX

* This is an optional step; it may benefit correctional personnel and the prosecutor if the inmate signs a Form II.

APPENDIX L-1

CONVERSION OF IAD REQUESTS

Individual states and territories allow prosecutor's initiated requests for temporary custody to be converted into inmate requests for temporary transfer under the IAD, while some do not.

Alabama	Yes.
Arkansas	No.
Connecticut	Yes.
Illinois	No.
Louisiana	N/A.
Maine	Yes.
Michigan	No.
Minnesota	No authority on issue.
Nevada	Yes.
New Jersey	No, per Attorney General's opinion.
Virginia	Upon receipt of prosecutor's demand, DOC provides inmate with Art. III application as well. If Art. III application is filled out, inmate's request for temporary custody is forwarded to receiving state.
Utah	No.
Wyoming	Yes.

FORM I

INTERSTATE AGREEMENT ON DETAINERS

One copy of this form, signed by the inmate and the warden, should be retained by the warden. One copy, signed by the warden should be retained by the inmate.

NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT AND OF RIGHT TO REQUEST DISPOSITION

Inmate _____ No. _____ Inst. _____

NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT

Pursuant to the Interstate Agreement on Detainers (IAD), you are hereby informed that a detainer has been lodged for the following untried indictments, informations, or complaints against you concerning which the undersigned has knowledge, and the source and contents of each:

(1) Jurisdiction/Agency: _____

Crime(s) charged: _____

(2) Jurisdiction/Agency: _____

Crime(s) charged: _____

(3) Jurisdiction/Agency: _____

Crime(s) charged: _____

RIGHT TO REQUEST DISPOSITION OF CHARGES AND TO SPEEDY TRIAL

You are hereby further advised that under the IAD you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending, and the appropriate court, that a final disposition be made thereof. You shall then be brought to trial within 180 days, unless extended pursuant to provisions of the IAD, after said prosecuting officer and said court have received written notice of the place of your imprisonment and your request, together with a certificate of the custodial authority as more fully set forth in the IAD. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

WAIVER AND CONSENT

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of trial to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the IAD and a further consent to be voluntarily returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify of the institution in which you are confined.

RIGHT TO OPPOSE REQUEST FOR TEMPORARY CUSTODY

You are also advised that under provisions of the IAD the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may request your temporary custody to obtain a final disposition thereof. In that event, you may oppose such request. You may request the Governor of this state to disapprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Governor has not affirmatively consented to or ordered such delivery. You are also entitled to the procedural protections provided in state extradition laws.

_____ Dated: _____
Warden

CUSTODIAL AUTHORITY

Name: _____

Institution: _____

Address: _____

City/State: _____

Telephone: _____

RECEIVED

INMATE: _____ NO: _____ DATE: _____
(Signature)

WITNESS: _____ DATE: _____
(Signature)

_____
(Printed Name & Title)

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Form I

FORM II

INTERSTATE AGREEMENT ON DETAINERS

Six copies, if only one jurisdiction within the state involved has an indictment, information or complaint pending. Additional copies will be necessary for prosecuting officials and clerks of court if detainers have been lodged by other jurisdictions within the state involved. One copy should be retained by the inmate. One signed copy should be retained by the institution. Signed copies must be sent to the Agreement Administrators of the sending and receiving states, the prosecuting official of the jurisdiction which placed the detainer, and the clerk of the court which has jurisdiction over the matter. The copies for the prosecuting official and the court must be transmitted by certified or registered mail, return receipt requested.

INMATE'S NOTICE OF PLACE OF IMPRISONMENT AND REQUEST FOR DISPOSITION OF INDICTMENTS, INFORMATIONS OR COMPLAINTS

TO: (1)_____ Prosecuting Officer _____
(Jurisdiction)

(2) Clerk of _____ Court _____
(Jurisdiction)

And to all other prosecuting officers and courts of jurisdictions listed below in which indictments, informations or complaints are pending.

You are hereby notified that the undersigned, _____, is now
(Inmate's Name & Number)

imprisoned in_____ at _____.
(Institution) (City and State)

I hereby request that final disposition be made of the following indictments, informations or complaints now pending against me: _____

_____

_____

Failure to take action in accordance with the Interstate Agreement on Detainers (IAD), to which your state is committed by law, will result in the dismissal of the indictments, informations or complaints.

I hereby agree that this request will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against me from your state. I also agree that this request shall be deemed to be my waiver of extradition to your state for any proceeding contemplated hereby, and a waiver of extradition to your state to serve any sentence there imposed upon me, after completion of my term of imprisonment in this state. I also agree that this request shall constitute consent by me to the production of my body in any court where my presence may be required in order to effectuate the purposes of the IAD and a further consent to be returned to the institution in which I now am confined.

If jurisdiction over this matter is properly in another agency, court, or officer, please designate below the proper agency, court, or officer and return this form to sender.

_____

_____

The required Certificate of Inmate Status (Form III) and Offer of Temporary Custody (Form IV) are attached.

_____	_____	_____
Inmate's Printed Name & Number	Inmate's Signature	Date

_____	_____	_____
Witness's Printed Name & Title	Witness's Signature	Date

FORM III

INTERSTATE AGREEMENT ON DETAINERS

In the case of an inmate's request for disposition under Article III, copies of this Form should be attached to all copies of Form II. In the case of a request initiated by a prosecutor under Article IV, a copy of this Form should be sent to the prosecutor upon receipt by the warden of Form V. Copies of this Form should be sent to all other prosecutors in the same state who have lodged detainers against the inmate. A copy may be given to the inmate.

CERTIFICATE OF INMATE STATUS

_____ _____
(Inmate) (Number)

_____ _____
(Institution) (Location)

_____ hereby certifies:
(Custodial authority)

1. The inmate's commitment offense(s): _____
2. The term of commitment under which the inmate is being held: _____
3. The time already served: _____
4. Time remaining to be served on the sentence: _____
5. Good time earned/Good time release date: _____
6. The date of parole eligibility of the inmate: _____
7. The decisions of the state parole agency relating to the inmate: (If additional space is needed, use reverse side.)_____
8. Maximum expiration date under present sentence:_____
9. Security level/special security requirements: _____

10. Detainers currently on file against this inmate from your state:

_____ Dated: _____
Warden

CUSTODIAL AUTHORITY

Name/Title: _____

Institution: _____

Address: _____

City/State: _____

Telephone: _____

FORM IV

INTERSTATE AGREEMENT ON DETAINERS

Inmate's request: Copies of this Form should be attached to all copies of Form II. Prosecutor's request: This Form should be completed after the warden has approved the request for temporary custody, expiration of the 30 day period, and successful completion of a pretransfer hearing. Copies of this Form should then be sent to all officials who receive(d) copies of Form III. One copy also should be given to the inmate and one copy should be retained by the institution. Copies mailed to the prosecutor should be sent certified or registered mail, return receipt requested.

OFFER TO DELIVER TEMPORARY CUSTODY

TO: _____ Prosecuting Officer
(Jurisdiction)

And to all other prosecuting officers and courts of jurisdictions listed below from which indictments, informations or complaints are pending.

RE: _____ No. _____
(Inmate)

Pursuant to Article V of the Interstate Agreement on Detainers (IAD), the undersigned hereby offers to deliver temporary custody of the above-named inmate to the appropriate authority in your state in order that speedy and efficient prosecution may be had of the indictment, information or complaint which is

☐ described in the attached inmate's request (Form II)

☐ described in your request for custody (Form V) of _____
(Date)

The required Certificate of Inmate Status (Form III)

☐ is enclosed

☐ was sent to you with our letter of _____
(Date)

Indictments, informations or complaints charging the following offenses are also pending against the inmate in your state and you are hereby authorized to transfer the inmate to the custody of appropriate authorities in these jurisdictions for purposes of disposing of these indictments, informations or complaints.

Offense:	County or Other Jurisdiction:
_____	_____
_____	_____
_____	_____

If you do not intend to bring the inmate to trial, please inform us as soon as possible.

_____ Date: _____
Warden

CUSTODIAL AUTHORITY

Name/Title: _____

Institution: _____

Address: _____

City/State: _____

Telephone: _____

FORM V

INTERSTATE AGREEMENT ON DETAINERS

Six copies. Signed copies must be sent to the inmate and to the official who has the inmate in custody. A copy should be sent to the Agreement Administrators of both the sending and the receiving states. Copies should be retained by the person filing the request and the judge who signs the request. Prior to transfer, the inmate may be afforded a judicial hearing similar to that provided under the Uniform Criminal Extradition Act, in which the inmate may bring a limited challenge to this request.

REQUEST FOR TEMPORARY CUSTODY

TO: _____ _____
Warden (Institution)

_____ _____
(Address) (City/State)

Please be advised that_____, who is presently an inmate of
(Inmate's Name & Number)

your institution, is under [indictment] [information] [complaint] in the _____
(Jurisdiction)

of which I am the _____.
(Title of Prosecuting Officer)

Said inmate is therein charged with the following offense(s): _____

_____

_____

In order that proceedings in this matter may be properly had, I hereby request temporary custody of such person pursuant to Article IV(a) of the Interstate Agreement on Detainers (IAD).

I propose to bring this person to trial on the above [indictment] [information] [complaint] within the time specified in Article IV(c) of the IAD.

Attached herewith find a certified copy of :

A. The complaint, information or indictment.

B. The warrant.

C. Fingerprint cards, photographs, and physical description (if available).

I hereby agree that immediately after trial is completed in this jurisdiction I will return the prisoner directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, the Notice of Disposition of a Detainer, immediately after trial and to return it to your state with the inmate.

Signature: _____ Dated: _____

_____
(Printed Name & Title)

Address: _____

City/State: _____ Telephone: _____

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action in accordance with its terms and the provisions of the IAD.

Signature: _____ Dated: _____

Judge

_____, Judge

(Printed name)

Court/Judicial District: _____

City/State: _____

Telephone: _____

FORM VI

INTERSTATE AGREEMENT ON DETAINERS

Five copies. All copies, with original signatures by the prosecutor and the agent, should be sent to the Agreement Administrator of their own state. After signing all copies, the Administrator should retain one for his/her files, send one to the warden/superintendent of the institution in which the inmate is located and return two copies to the prosecutor, who will give one to the agent for use in establishing his/her authority and place one in his/her files. One copy should also be forwarded to the Agreement Administrator in the sending state.

EVIDENCE OF AGENT'S AUTHORITY TO ACT FOR RECEIVING STATE

TO: _____
Administrator of the Agreement on Detainers

_____
(Address)

_____ is confined in _____
(Inmate's name and number) (Institution)

_____ and, pursuant to the Interstate Agreement on Detainers
(Address)

(IAD), will be taken into custody at the institution on or about _____

for delivery to the County of _____, State of _____ for trial.

After the completion of the trial, the inmate shall be returned to the sending state.

In accordance with Article V(b), I have designated the agent(s) named below to return the prisoner.

_____ Dated: _____
(Prosecutor's Signature)

Printed Name: _____ Title: _____

County: _____

Address: _____

City/State: _____ Telephone: _____

Agent(s) printed name(s) and signature(s):

_____ and/or

_____ and/or

_____

TO: Warden/Superintendent

In accordance with the above representation and the provisions of the IAD, the persons listed above are hereby designated as Agents for the State of _____ to deliver _____
(Inmate's Name & Number)

To _____, State of _____ for trial. At completion of the trial
(Jurisdiction)

the above inmate shall be returned to _____.
(Institution & Address)

Signature: _____ Dated: _____
Agreement Administrator

Agreement Administrator: _____

Address: _____

City/State: _____

Telephone: _____

FORM VII

INTERSTATE AGREEMENT ON DETAINERS

Six copies. IMPORTANT: This form should only be used when an offer of temporary custody has been received as the result of an inmate's request for disposition of a detainer. [If the offer has been received because another prosecutor in your state has initiated the request, use Form VIII.] Copies of Form VII should be sent to the warden, the inmate, the other jurisdictions in your state listed in the offer of temporary custody, and the Agreement Administrators of the sending and receiving states. Copies should be retained by the person filing the acceptance and the judge who signs it. If the offer of custody is being made to more than one jurisdiction in your state, the prosecutor from each jurisdiction should submit a Form VII.

PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY OFFERED WITH AN INMATE'S REQUEST FOR DISPOSITION OF A DETAINER

TO: _____
Warden

_____
(Institution)

_____
(Address) (City/State)

In response to your letter of _____ and offer of temporary custody regarding
(Date)

_____, who is presently under indictment, information,
(Inmate's Name & Number)

or complaint in _____ of which I am the _____,
(Jurisdiction) (Title of Prosecuting Officer)

please be advised that I accept temporary custody and that I propose to bring this person to trial on the indictment, information, or complaint named in the offer within the time specified in Article III (a) of the Interstate Agreement on Detainers (IAD).

I hereby agree that immediately after the trial is completed in this jurisdiction, I will return the inmate directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, Prosecutor's Report of Disposition of Charges, immediately after trial, and return it to your state with the inmate.

(If your jurisdiction is the only one named in the offer of temporary custody, use the space below to indicate when you would like to send your agents to bring the inmate to your jurisdiction. If the offer of temporary custody has been sent to other jurisdictions in your state, use the following space to make inquiry as to the order in which you will receive custody, or to indicate any arrangements you have already made with other jurisdictions in your state in this regard. Each prosecutor in a receiving state jurisdiction should submit a Form VII in accordance with the instructions above.)

ARRANGEMENTS/INQUIRY: _____

_____

_____

_____

_____

Prosecutor's Signature: _____ Dated: _____

Printed Name/Title: _____

County/Jurisdiction: _____

Address: _____

City/State: _____

Telephone: _____

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV (a) and that the facts recited herein are correct and that having duly recorded this acceptance, I hereby transmit it for action in accordance with its terms and the provisions of the IAD.

Judge's Signature: _____ Dated: _____

Printed Name: _____

Court/Judicial District: _____

Address: _____

City/State: _____

Telephone: _____

FORM VIII

INTERSTATE AGREEMENT ON DETAINERS

Six copies. IMPORTANT: This form should only be used when an offer of temporary custody has been received as the result of a prosecutor's request for disposition of a detainer. [If the offer has been received because an inmate has initiated the request, use Form VII to accept such an offer.] Include the bracketed sentence in the first paragraph if you have been offered custody as a result of another prosecutor's request for disposition. Copies of Form VIII should be sent to the warden, the inmate, the other jurisdictions in your state listed in the offer of temporary custody, and the Agreement Administrators of the sending and receiving states. Each prosecutor in a receiving state jurisdiction should submit a Form VIII in accordance with these instructions. Copies should be retained by the person filing the acceptance and the judge who signs it.

PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY OFFERED IN CONNECTION WITH A PROSECUTOR'S REQUEST FOR DISPOSITION OF A DETAINER

TO: _____
Warden

_____
(Institution)

_____
(Address) (City/State)

According to your letter of _____, _____
(Date) (Inmate's Name & Number)

is being returned to this state at the request of _____,
(Name & Title of Prosecuting Officer)

of _____. [I hereby accept your offer of temporary custody of the above inmate,
(Jurisdiction)

who is also under indictment, information, or complaint in _____,]
(Jurisdiction)

of which I am the _____.
(Title of Prosecuting Officer)

I plan to bring this person to trial on said indictment, information, or complaint within the time specified in Article IV(c) of the Interstate Agreement on Detainers (IAD).

I hereby agree that immediately after the trial is completed in this jurisdiction, I will return the inmate directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, Prosecutor's Report of Disposition of Charges, immediately after trial, and return it to your state with the inmate.

(Use the following space to make inquiry as to the order in which your jurisdiction will receive custody or to inform the warden of arrangements you have already made with other jurisdictions in your state in this regard.)

ARRANGEMENTS/INQUIRY: _____

_____

_____

_____

_____

Prosecutor's Signature: _____ Dated: _____

Printed Name/Title: _____

County/Jurisdiction: _____

Address: _____

City/State: _____

Telephone: _____

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV (a) and that the facts recited herein are correct and that having duly recorded this acceptance, I hereby transmit it for action in accordance with its terms and the provisions of the IAD.

Judge's Signature: _____ Dated: _____

Printed Name: _____

Court/Judicial District: _____

Address: _____

City/State: _____

Telephone: _____

FORM IX

INTERSTATE AGREEMENT ON DETAINERS

Four copies. One copy to be retained by the prosecutor; one copy to be sent to the warden, superintendent, or director of the state of original imprisonment; one copy to be sent to the Agreement Administrator of each state.

PROSECUTOR'S REPORT OF DISPOSITION OF CHARGES

TO: _____
Warden

_____
(Institution)

_____
(Address) (City/State)

_____ pursuant to the Interstate Agreement on Detainers (IAD) for trial based on the charge or charges contained in the

☐ IAD Form II (Inmate's Request

☐ IAD Form V (Prosecutor's Request)

The disposition of the charge(s), including any sentence imposed, in this jurisdiction was as follows:

_____

_____

_____

☐ Please withdraw detainer

☐ Please lodge attached judgment/commitment as a detainer

Contact the following 30 to 60 days prior to release to make arrangements to return the inmate:

Name/Title : _____

Address: _____

City/State: _____

Telephone: _____

Prosecutor's Signature: _____ Dated: _____

Printed Name/Title: _____

County/Jurisdiction: _____

Address: _____

City/State: _____

Telephone: _____

APPENDIX M

UNIFORM ACT TO SECURE THE ATTENDANCE OF WITNESSES FROM WITHOUT A STATE IN CRIMINAL PROCEEDINGS

Alabama	Code 1975, §§ 12-21-280 to 12-21-285
Alaska	AS 12.50.010 to 12.50.080
Arizona	A.R.S. §§ 13-4091 to 13-4096
Arkansas	A.C.A. §§ 16-43-402 to 16-43-409
California	West's Ann.Cal.Pena1 Code, §§ 1334 to 1334.6
Colorado	West's C.R.S.A. §§ 16-9-201 to 16-9-205
Connecticut	C.G.S.A. § 54-82i
Delaware	11 De1.C. §§ 3521 to 3526
Dist. of Columbia	D.C. Code 1981 §§ 23-1501 to 23-1504
Florida	West's F.S.A. §§ 942.01 to 942.06
Georgia	O.C.G.A. §§ 24-10-90 to 24-10-97
Hawaii	HRS §§ 836-1 to 836-6
Idaho	I.C. § 19-3005
Illinois	725 ILCS 220/2 and 725 ILCS 220/3
Indiana	West's A.I.C. 35-37-5-1 to 35-37-5-9
Iowa	I.C.A. §§ 819.1 to 819.5
Kansas	K.S.A. 22-4201 to 22-4206
Kentucky	KRS 421.230 to 421.270
Louisiana	LSA-C.Cr.P. arts. 741 to 745
Maine	15 M.R.S.A. §§ 1411 to 1415
Maryland	Code, Courts & Judicial Proc., §§ 9-301 to 9-306
Massachusetts	M.G.L.A. c. 233, § 13A to 13D
Michigan	M.C.L.A. §§ 767.91 to 767.95
Minnesota	M.S.A. §§ 634.06 to 634.09
Mississippi	Code 1972, §§ 99-9-27 to 99-9-35
Missouri	V.A.M.S. §§ 491.400 to 491.450
Montana	MCA 46-15-112, 113, 120
Nebraska	R.R.S. 1943, §§ 29-1906 to 29-1911
Nevada	N.R.S. §§ 174.395 to 174.445
New Hampshire	RSA 613:l to 613:6
New Jersey	N.J.S.A. 2A:81-18 to 2A:81-23
New Mexico	NMSA 1978, §§ 31-8-1 to 31-8-6
New York	McKinney's CPL § 640.10
North Carolina	G.S. §§ 15A-811 to 15A-816
North Dakota	NDCC 31-03-25 to 31-03-31
Ohio	R.C. §§ 2939.25 to 2939.29
Oklahoma	22 Okl.St.Ann. § 721 to 727
Oregon	ORS 136.623 to 136.637
Pennsylvania	42 Pa.C.S.A §§ 5961 to 5965
Puerto Rico	34 L.P.R.A §§ 1471 to 1475

Rhode Island	Gen.Laws 1956, §§ 12-16-1 to 12-16-13
South Carolina	Code 1976, §§ 19-9-10 to 19-9-130
South Dakota	SDCL 23A-14-1 et seq.
Tennessee	T.C.A. §§ 40-17-201 to 40-17-212
Texas	Texas C.C.P. Art. 24.28
Utah	U.C.A. 1953, 77-21-1 to 77-21-5
Vermont	13 V.S.A. §§ 6641 to 6649
Virgin Islands	5 V.1.C. §§ 3861 to 3865
Virginia	Va. Code §§ 19.2-272 to 19.2-282
Washington	West's RCWA 10.55.010 to 10.55.130
West Virginia	Code, 62-6A-1 to 62-6A-6
Wisconsin	W.S.A 976.02
Wyoming	W.S. 1977 §§ 7-11-404 to 7-11-406.

APPENDIX N

UNIFORM RENDITION OF PRISONERS AS WITNESSES IN CRIMINAL PROCEEDINGS ACT

Arkansas	A.C.A. §§ 16-43-301 to 16-43-311
Georgia	O.C.G.A. §§ 24-10-90 to 24-10-97
Idaho	I.C. § 19-3013 to 19-3022
Illinois	725 ILCS 235/6
Indiana	Ind. C. §§ 35-37-5-6
Kansas	K.S.A. 22-4207 to 22-4215
Kentucky	KRS 421.600 to 421.690
Maine	15 M.R.S.A. §§ 1461 to 1471
Michigan	M.C.L.A. §§ 780.111 to 780.120
Nebraska	R.R.S. 1943, §§ 29-3201 to 29-3210
New Hampshire	RSA 613-A:1 to 613-A:11
New Jersey	Not a party, but will allow for transfer according to statute as long as asylum state is agreeable. Otherwise will utilize executive agreement.
New York	New York CRL § 650.10
North Carolina	G.S. 15A-821-822
Oklahoma	22 Okl.St.Ann. §§ 728 to 737
Pennsylvania	42 Pa.C.S.A. §§ 5971 to 5979
Rhode Island	Gen. Laws 1956, §§ 12-16.1-1 to 12-16.1-8
Texas	Vernon's Ann. Texas C.C.P. Art. 24.29
Utah	U.C.A. 1953, 77-33-1 to 77-33-10
Wisconsin	W.S.A. 976.01

APPENDIX O

UNIFORM ACT FOR OUT-OF-STATE PROBATIONER OR PAROLEE SUPERVISION

Alabama	Code 1975, § 15-22-1 repealed
Alaska	AS 33.35.010-33.35.040
Arizona	A.R.S. §§ 31-461 to 31-465
Arkansas	A.C.A. §§ 16-93-901 to 16-93-903
California	California Penal Code, §§ 11175-11179
Colorado	West's C.R.S. 24-60-301 to 24-60-309
Connecticut	C.G.S.A. §§ 54-132 to 54-138
Delaware	11 Del.C. §§ 4358, 4359
D.C.	D.C. Code 1981, §§ 24-251 to 24-253
Florida	West's F.S.A. §§ 949.07 to 949.09
Georgia	O.C.G.A. §§ 49-2-70 to 49-2-71
Hawaii	HRS §§ 353-81, 353-82
Idaho	I.C. § 20-301
Illinois	730 ILCS 5/3-4-4
Indiana	West's A.I.C. 11-13-4-1, 11-13-4-2
Iowa	I.C.A. § 247.40
Kansas	K.S.A. 22-4101 et seq.
Kentucky	KRS 439.560
Louisiana	LSA-R.S. 15:574.14 repealed
Maine	34-A M.R.S.A. §§ 9871 to 9888.
Maryland	MD Code 1999, C.S.A., §§ 6-201 to 6-205
Massachusetts	M.G.L.A. c. 127, §§ 151A to 151G
Michigan	M.C.L.A. §§ 798.101 to 798.103
Minnesota	M.S.A. § 243.161
Mississippi	Code 1972, § 47-7-71
Missouri	V.A.M.S. § 217.810
Montana	Repealed
Nebraska	R.R.S. 1943, §§ 29-2637, 29-2638
Nevada	N.R.S. 213.215
New Hampshire	RSA 651-A:25
New Jersey	N.J.S.A. 2A:168-26 to 2A:168-39
New Mexico	NMSA 1978, §§ 31-5-1, 31-5-2
New York	McKinney's Executive Law §§ 259-m and 259-mm
North Carolina	G.S. §§ 148-65.1, 148-65.2
North Dakota	NDCC 12-56-01, 12-56-02
Ohio	R.C. §§ 5149.01 to 5149.23
Oklahoma	57 Okl.St.Ann. §§ 347 to 349
Oregon	ORS 144.610 to 144.620
Pennsylvania	61 P.S. §§ 321, 322
Puerto Rico	4 L.P.R.A. §§ 637 to 639

Rhode Island	Gen. Laws 1956, §§ 13-9-1 to 13-9-3
South Carolina	Code 1976, 24-21-810 to 24-21-830
South Dakota	SDCL 24-15-14 to 24-15-19
Tennessee	T.C.A. § 40-28-401
Texas	Vernon's Ann. Texas C.C.P. Art. 42.11
U.S.	4 U.S.C.A. § 112
Utah	U.C.A. 1953, 77-22-24 to 77-22-31
Vermont	28 V.S.A. § 1301
Virgin Islands	5 V.I.C. §§ 4631 to 4633
Virginia	Code 1950, §§ 53.1-166, 53:1-167
Washington	West's RCWA 9.95.270
West Virginia	Code, 28-6-1, 28-6-2
Wisconsin	W.S.A. 57.13
Wyoming	W.S. 1977, §§ 7-13-412 to 7-13-417

APPENDIX O-1

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

MEMBER STATE STATUTES

Alabama	Code 1975, §§ 15-22-1.1 to 15-22-1.2
Alaska	AS 33-36-3
Arizona	ARS 31-3-4.1
Arkansas	ACA 12-15-101
California	Cal. Penal Code 11180
Colorado	CRSA §§ 24-60-2802
Connecticut	CGSA Sec 54-133
Florida	FSA 949-07
Georgia	Code 42-9-81
Hawaii	HRS 353B-1
Idaho	IC § 20-301
Illinois	45 ILCS 170/5
Iowa	ICA Sec 907B-2
Kansas	K.S.A. § 22-4110
Kentucky	KRS § 439.561
Louisiana	LSA RS 15:574.31-44
Maryland	MD Code Correctional Ser 6-201
Michigan	MCLA 3.1011-3-1012
Minnesota	MN ST 243.1605 repealed
Missouri	VAMS § 589.500
Montana	MCA 46-23-1115
Nevada	NRS 213.215
New Jersey	NJSA 2A:168-26
New Mexico	NMSA 1978 Sec 31-5-20
North Carolina	NCGSA 148-4B
North Dakota	NDCC 12-65-01
Ohio	RC Sec 5149-21
Oklahoma	22 Okl St Ann §§ 1091
Oregon	ORS Sec 144-600
Pennsylvania	PA ST 61 PS 321
Rhode Island	RI ST 13-9.1-1
South Carolina	SDCL Sec 24-16A-1
South Dakota	SD ST 24-24-16A
Tennessee	TCA 40-28-41
Texas	VTCA 510.001
Utah	UCA 1953 Sec 77-28C-103
Vermont	28 VSAT 22 § 1351
Washington	WA ST 9-94A-745
Wisconsin	WSA 304-16
Wyoming	WY ST SEC 7-13-423
District of Columbia	DC ST § 24-133

APPENDIX O-2

ASSOCIATION OF PAROLE AND PROBATION COMPACT ADMINISTRATORS

Every state deputy compact administrator may be found at www.interstatecompact.orr.

APPENDIX P

INTERSTATE COMPACT ON JUVENILES

Alabama	Code 1975, §§ 44-2-1 to 44-2-7
Alaska	AS 47.15.010 to 47.15.080
Arizona	A.R.S. §§ 8-361 to 8-367
Arkansas	Ark.Stats. §§ 45-301 to 45-307
California	West's Ann. Welf. & Inst. Code §§ 1300-1308
Colorado	C.R.S. 24-60-701 to 24-60-708
Connecticut	C.G.S.A. §§ 17-75 to 17-81
Delaware	31 Del.C. §§ 5203, 5221 to 5228
District of Columbia	D.C. Code 1981, §§ 32-1101 to 32-1106
Florida	West's F.S.A. §§ 39.25 to 39.31
Georgia	O.C.G.A. §§ 39-3-1 to 39-3-7
Hawaii	HRS §§ 582-1 to 582-8
Idaho	I.C. §§ 16-1901 to 16-1910
Illinois	45 ILCS 10
Indiana	West's A.I.C. 31-6-10-1 to 31-6-10-4
Iowa	I.C.A. §§ 232.139, 232.140
Kansas	K.S.A. 38-1001 et seq.
Kentucky	KRS 208.600, 208.660, 208-670
Louisiana	LSA-R.S. 46:1451 to 46:1458
Maine	34-A M.R.S.A. §§ 9001 to 9016
Maryland	Code 1957, Art. 41, §§ 387 to 395
Massachusetts	M.G.L.A. c. 119 App., §§ 1-1 to 1-7
Michigan	M.C.L.A. §§ 3.701 to 3.706
Minnesota	M.S.A. §§ 260.51 to 260.57
Mississippi	Code 1972, §§ 43-25-1 to 43-25-17
Missouri	V.A.M.S. §§ 210.570 to 210.600
Montana	MCA 41-6-101 to 41-6-106
Nebraska	R.R.S. 1943, §§ 43-1001 to 43-1009
Nevada	N.R.S. 214.010 to 214.060
New Hampshire	RSA 169-A:1 to 169-A:9
New Jersey	N.J.S.A. 9:23-1 to 9:23-4
New Mexico	N.M.S.A. 1978, §§ 32-3-1 to 32-3-8
New York	McKinney's Unconsol. Laws, §§ 1801 to 1806
North Carolina	G.S. §§ 110-58 to 110-64
North Dakota	NDCC 27-22-01 to 27-22-06
Ohio	R.C. §§ 2151.56 to 2151.61
Oklahoma	10 Okl.St.Ann. §§ 531 to 537
Oregon	ORS 417.010 to 417.080
Pennsylvania	62 P.S. § 731 et seq.
Rhode Island	Gen. Laws 1956, §§ 14-6-1 to 14-6-11
South Carolina	Code 1976, § 27-17-10

South Dakota	SDCL 26-12-1 to 26-12-13
Pennsylvania	62 P.S. § 731 et seq.
Rhode Island	Gen. Laws 1956, §§ 14-6-1 to 14-6-11
South Carolina	Code 1976, § 27-17-10
Tennessee	T.C.A. §§ 37-801 to 37-806
Texas	V.T.C.A., Family Code §§ 25.01 to 25.09
Utah	U.C.A. 1953, 55-12-1 to 55-12-6
Vermont	33 V.S.A. § 551 et seq.
Virginia	Code 1950, §§ 16.1-323 to 16.1-330
Washington	West's RCWA 13.24.010 to 13.24.900
West Virginia	Code, 49-8-1 to 49-8-7
Wisconsin	W.S.A. 48.991 to 48.997
Wyoming	W.S. 1977, § 14-5-101

APPENDIX Q

ASSOCIATION OF JUVENILE COMPACT ADMINISTRATORS

DIRECTORY MARCH 2003

State	Contact Person	Compact Administrator	Agency Director
ALABAMA	Kaki Sanford Deputy Compact Admin. Dept. of Youth Services P. O. Box 66 Mt. Meigs, AL 36057 334-215-3817	J. Walter Wood, Jr. Executive Director Dept. of Youth Services P. O. Box 66 Mt. Meigs, AL 36057 334-215-3800	J. Walter Wood, Jr. Executive Director Dept. of Youth Services P. O. Box 66 Mt. Meigs, AL 36057 334-215-3800
ALASKA	Barbara Murray Deputy Compact Admin. Div. of Juvenile Justice P.O. Box 110635 Juneau, AK 99811-0635 907-465-2116	Steve McComb Division of Juvenile Justice P. O. Box 110635 Juneau, AK 99811-0635 907-465-4335	Bill Hogan Commissioner Health & Social Services P. O. Box 110601 Juneau, AK 99811-0601 907-465-3030
ARIZONA	Pablo Sedillo Deputy Compact Admin. Dept. of Juvenile Corrections 1122 North 7th Street, #210 Phoenix, AZ 85006 602-542-0498	Michael Branham Dept. of Juvenile Corrections 1624 West Adams Phoenix, AZ 85006 602-542-4302	Michael Branham Director Dept. of Juvenile Corrections 1624 West Adams Phoenix, AZ 85006 602-542-4302
ARKANSAS	Judy Miller Deputy Compact Admin. Div. of Youth Services Dept. of Human Services P. O. Box 1437 - Slot S503 Little Rock, AR 72203-1437 501-682-1929	Kurt Knickrehm Director Dept. of Human Services 700 Main Street Little Rock, AR 72203-1437 501-682-8650	Doyle Herndon Director Division of Youth Services P. O. Box 1437, Slot 501 Little Rock, AR 72203-1437 501-682-8654
CALIFORNIA	William Campos Deputy Compact Admin. California Youth Authority 4241 Williamsbourgh Dr #223 Sacramento, CA 95823 916-262-1368	Jerry Harper Director California Youth Authority 4241 Williamsbourgh Dr Sacramento, CA 95823 916-262-1467	Jerry Harper Director California Youth Authority 4241 Williamsbourgh Dr Sacramento, CA 95823 916-262-1467
COLORADO	Summer Foxworth Deputy Compact Admin. Division of Youth Corrections 3900 So Carr Street, Bldg 81 Denver, CO 80235 303-987-4615	Stephen K. Bates Director Division of Youth Corrections 4255 So Knox Court Denver, CO 80236	Stephen K. Bates Director Division of Youth Corrections 4255 So Knox Court Denver, CO 80236

State	Contact Person	Compact Administrator	Agency Director
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APPENDIX R

National Association of

Extradition Officials

Resolutions

1965-2008

RESOLUTION #1

REVISION OF THE HANDBOOK ON INTERSTATE CRIME CONTROL

Resolution adopted by the N.A.E.O.
at its First Annual Conference
Kansas City, Missouri
July 1965

RESOLVED: That the Council of State Governments be commended for its interest in the field of extradition and interstate crime control, and that the Council be respectfully requested to revise its July 1955 addition of its handbook on Interstate Crime Control, with particular emphasis being given to the section on interstate extradition.

RESOLUTION #2

STATE EXTRADITION DIRECTORY

Resolution adopted by the N.A.E.O.
at its First Annual Conference,
Kansas City, Missouri
July 1965

RESOLVED: That the Council of State Governments and/or appropriate officials of the National Governors' Conference, be, and they are hereby respectfully requested to prepare for the benefit of the executive officers of the several states a pamphlet or booklet showing or giving the following information: (1) The names, addresses, and telephone numbers of the person or persons of the respective states in charge of extradition matters and (2) the special executive requirements of states in extradition matters other than those set forth in the Uniform Criminal Extradition Act, or Federal Extradition Laws. For example, the number of copies or sets of extradition papers required by the several states, the handling of extraditions based on crimes of abandonment and non-support of minor children, the amount of extradition fees charged by the respective states, etc.

RESOLUTION #3

EXTRADITION CASES INVOLVING NON-SUPPORT, BAD CHECKS, REMOVAL OF MORTGAGED PROPERTY, RENTAL PROPERTY, CHILD STEALING, AND MISDEMEANORS

Resolution adopted by the N.A.E.O.
at its Seventh Annual Conference,
Lake Tahoe, Nevada
May 1971

WHEREAS, it is the purpose of the NAEO to seek uniform positions of policy among its member states on various issues in extradition;

IT IS HEREBY RESOLVED, that the National Association adopt the following enumerated positions:

1. Non-Support.

(a) The Uniform Reciprocal Enforcement of Support Act should be employed prior to seeking extradition. If it has not been employed, an affidavit from the prosecutor or appropriate police officer should be filed with the papers, explaining in detail the reason why the uniform act has not been employed. This is intended to apply also to similar charges such as abandonment of minor children, etc. The term "non-support" is used in its generic sense.

2. Bad Checks.

(a) Extradition should not issue on the charge of insufficient funds unless the check or aggregate of checks total more than $100 or unless special circumstances exist showing that the accused is a chronic violator. The cost to the demanding state should be considered before extradition is sought.

(b) Forgery--uttering--no account. Extradition should issue automatically in these cases.

3. Removing Mortgaged Property.

(a) The amount of money involved in this type of case is felt to be of little importance. Only in exceptional circumstances should extradition be sought under this type of statute. For example, if the accused has made regular payments on the merchandise and perhaps owes only a reasonable balance, extradition should not be sought as this is clearly a civil matter. However, if the accused has purchased the vehicle or merchandise and departed the jurisdiction without making any payments the intent would seem to be clearly established and extradition should issue.

4. Rental Property.

(a) When the accused fails to return the property such as a motor vehicle, the same is located, and no intent to steal can be established, it would appear that this is a civil matter and extradition should not issue.

(b) If, however, the accused rents the property and leaves the jurisdiction immediately or shortly thereafter for parts unknown, extradition should issue.

(c) Other statutes should be employed other than the rental property statutes whenever possible, and when extradition is sought in this typed of situation a detailed affidavit should be filed with the papers supporting the request.

5. Child Stealing.

(a) Each case should stand on its own merits.

6. Misdemeanors.

(a) Because of the terminology employed in many jurisdictions a misdemeanor may carry as little as 10 days or as much as life. Consequently, the mere fact that the charge is a misdemeanor in the demanding state does not in any way restrict the Governor's right to extradite. Each case, or course, should be considered on its own merits.

RESOLUTION #4

AFFIDAVIT OF IDENTIFICATION ACCOMPANYING EXTRADITION REQUISITIONS

Resolution adopted by the N.A.E.O.
at its Seventh Annual Conference,
Lake Tahoe, Nevada
May 1971

WHEREAS, the issue of identification of a fugitive is of critical importance in the extradition process;

IT IS HEREBY RESOLVED by the National Association of extradition Officials that all requisitions should include an affidavit of identification with the supporting documents.

RESOLUTION #5

SUPPORTING AFFIDAVIT ACCOMPANYING
REQUISITIONS FOR THE PURPOSE OF ESTABLISHING PROBABLE CAUSE

Resolution adopted by the N.A.E.O.
at its Seventh Annual Conference,
Lake Tahoe, Nevada
May 1971

WHEREAS, a great disparity in application of the Uniform Criminal Extradition Act has been found to exist among the various states; and

WHEREAS, an issue of great concern is the questioning by the court in the asylum state of the probable cause findings in the court of the demanding state;

IT IS HEREBY RESOLVED by the N.A.E.O. that in all documents which form the bases of the issuance of a Governor's Warrant in interstate rendition there be included a supporting affidavit, when required by the Uniform Act, made under oath before a magistrate or similar judicial officer, setting forth sufficient facts and circumstances that would enable said magistrate to make a finding that there was probable cause to conclude that the fugitive named in the Governor's warrant committed the crime set forth in that warrant, as required by the Fourth Amendment to the United States Constitution and explicated in Supreme Court decisions of Giordenello v. United States, 357 U.S. 480 (1958); Aguilar v. Texas, 378 U.S. 108 (1965); Spinelli v. United States, 393 U.S. 410 (1969); Whitely v. Warden, Wyoming State Penitentiary, 28 L.Ed. 2d 306 (1971).

RESOLUTION #6

UNIFORM FORMS

Resolution adopted by the N.A.E.O.
at its Seventh Annual Conference,
Lake Tahoe, Nevada
May 1971

WHEREAS, the Committee on Uniform Forms has fully considered the subject of uniform forms and has prepared a booklet in support of its recommendations and final report;

IT IS HEREBY RESOLVED by the N.A.E.O. that the attached report and booklet receive the full endorsement and support of the Association, and the implementation of the report and recommends it be of the highest priority to the Association.

REPORT
of
The Committee on Uniform Forms
NAEO Conference
May, 1971

The Committee on Uniform Forms decided to review what is considered the most important documents in the entire extradition process: the requisition by the Governor of the demanding state and the executive agreement for use by those states that have not adopted the Uniform Detainer Act. Wherefore, these recommendations submitted herewith are recommendations for those particular documents.

The Committee has studied the report and recommendations by the Committee on Uniform Forms that adopted the form which should be used in Governor requisitions. That committee, in 1969, recommended and adopted four situations on which the Governor of the demanding state makes his requisition to the Governor of the asylum state.

(1) The normal rendition demand where the fugitive committed an act in the demanding state and thereafter fled therefrom. This form appears at page 13 of your pamphlet.

(2) Where the fugitive has been convicted of a crime in the demanding state and thereafter either escaped, violated the terms of his parole, probation, or jumped bail. This form appears at page 17 of your pamphlet.

(3) Where the accused has intentionally committed an act in the asylum state or third state resulting in a crime in the demanding state. This form appears at page 21 of your pamphlet.

(4) A non-support action after a URESA action has been filed and is nonsuccessful. This form appears at page 25 of your pamphlet.

The Committee further recommends that the recommendations as to size and shape of the forms be followed as were originally recommended by the Committee on Forms as appears on page 10 of your pamphlet.

The only other form that the Committee recommends be adopted by those states which have not adopted the Uniform Detainer Act is the Executive Agreement which appears at page 41 of the pamphlet. The only change that is made on this form is at page 44 where some members feel that the signature of the Governor of the asylum state should also be included.

The Committee does not feel that it should attempt to standardize at this time the application for requisition because it is a local matter that should be handled locally.

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Membership of the Committee:

Marilyn Pochop, Nevada
Claire Nickels, North Carolina
Katherine Dunlap, South Carolina
John McInerny, California
Larry Perkins, Kentucky
Toni Friendenber, California
Gilbert Pena, Texas
Joe Buscher, Maryland

RESOLUTION #7

REFORM OF EXTRADITION LAW

Resolution adopted by the N.A.E.O.
at its Seventh Annual Conference,
Lake Tahoe, Nevada
May 1971

WHEREAS, it has been 16 years since the Uniform Criminal Extradition Act was first proposed and adopted by the states; and

WHEREAS, a wide variety of legal and procedural applications have developed under the Uniform Act; and

WHEREAS, a potential bottleneck exists in criminal justice at the point of extradition;

IT IS HEREBY RESOLVED by the National Association of Extradition Officials that the resources and personnel of this Association be committed to a national study of extradition to be funded by the Law Enforcement Assistance Administration in cooperation with the National Conference of Commissioners on Uniform state laws; and

IT IS FURTHER RESOLVED that the President appoint a three-member committee to prepare and submit a proposal to the Law Enforcement Assistance Administration and carry out the responsibilities of the Association under such grant.

RESOLUTION #8

APPOINTMENT OF COMMITTEE ON PROBABLE CAUSE

Resolution adopted by the N.A.E.O.
at its Seventh Annual Conference,
Lake Tahoe, Nevada
May 1971

WHEREAS, disparity of legal opinion has arisen among the states on the issue of the finding of probable cause upon which a warrant is issued; and

WHEREAS, it is the purpose of the N.A.E.O. that a uniform legal application be sought under the Uniform Criminal Extradition Act;

IT IS HEREBY RESOLVED by the National Association of Extradition Officials that the President appoint a three-member committee on probable cause whose function will be to prepare an amicus brief on behalf of the Association on any proper case for appeal. Said brief must be approved by the Executive Committee.

RESOLUTION #9

APPOINTMENT OF COMMITTEE ON UNIFORM FORMS

Resolution adopted by the N.A.E.O.
at its Seventh Annual Conference,
Lake Tahoe, Nevada
May 1971

WHEREAS, it is the expressed purpose of the National Association of Extradition Officials that uniformity of forms should be instituted by all member states;

IT IS HEREBY RESOLVED by the National Association of Extradition Officials that the President appoint a Committee on Uniform Forms for the purpose if implementing the recommendations for uniform forms as approved by the Association; and

IT IS FURTHER RESOLVED that the Executive Committee authorize a budget for the Committee on Uniform Forms to carry out its responsibility, said budget to be determined by the Executive Committee.

RESOLUTION #10

APPOINTMENT OF COMMITTEE ON PUBLICATIONS

Resolution adopted by the N.A.E.O.
at its Seventh Annual Conference,
Lake Tahoe, Nevada
May 1971

WHEREAS, it is the purpose of the National Association to advise its membership and interested parties of the activities of the Association and provide a means of advising the membership of developments in the law and procedure of extradition;

IT IS HEREBY RESOLVED by the National Association of Extradition Officials that the President appoint a four member committee on publications whose function will be to publish and distribute a newsletter and directory of personnel for the Association; and

IT IS FURTHER RESOLVED that the Executive Committee authorize a budget of $600 for this Committee on Publications to carry out its responsibilities; and

IT IS FURTHER RESOLVED that the Committee on Publications publish and distribute a loose-leaf booklet to be known as The Law Report to each member of the Association, such law report to be financed by funds from the Law Enforcement Assistance Administration and to work with individual state associations of the state's attorneys, prosecuting attorneys and like associations to develop a state supplement to The Law Report.

RESOLUTION #11

AMICUS BRIEF SUPPORTING PROPOSITION:
FOURTH AMENDMENT DOES NOT REQUIRE A SHOWING OF PROBABLE CAUSE

Resolution adopted by the N.A.E.O.
at its Eighth Annual Conference
Fort Lauderdale, Florida
May 1972

WHEREAS, the question of whether the Fourth Amendment requires that a Governor's warrant of rendition issue only upon a showing of probable cause subject to judicial review in the asylum state is of importance to the administration of criminal justice; and

WHEREAS, it is in the interest of justice that courts passing upon this issue by fully advised; and

WHEREAS, the members of this Association possess unique knowledge and experience in the field of extradition;

THEREFORE, BE IT RESOLVED that the Executive Committee be authorized, in an appropriate case, to file an amicus brief in support of the proposition that the Fourth Amendment does not require a showing of probable cause to the Governor of the asylum state before a warrant of rendition may issue.

RESOLUTION #12

RENDITION AMENDMENT TO THE INTERSTATE COMPACT ON JUVENILES

Resolution adopted by the N.A.E.O.
at its Eighth Annual Conference
Fort Lauderdale, Florida
May 1972

WHEREAS, the Rendition Amendment to the Interstate Compact on Juveniles provides a solution to the problem of interstate rendition of juveniles accused of criminal offenses;

THEREFORE, BE IT RESOLVED that this Association recommend the adoption of said amendment.

RESOLUTION #13

LIST OF STATES REQUIRING A SHOWING OF PROBABLE CAUSE

Resolution adopted by the N.A.E.O.
at its Eighth Annual Conference
Fort Lauderdale, Florida
May 1972

WHEREAS, the question of whether the Fourth Amendment requires that a Governor's warrant of rendition issue only upon a showing of probable cause subject to judicial review in the asylum state is of importance to the administration of criminal justice; and

WHEREAS, a knowledge of the procedures and requirements relating to probable cause of the various states would be of assistance to the members of this Association in the processing of extradition;

THEREFORE, BE IT RESOLVED that the Executive Committee be authorized and requested to determine and distribute a list of those states requiring a showing of probable cause and the mode in which such showing may be made.

RESOLUTION #14

REFORM OF EXTRADITION LAW

Resolution adopted by the N.A.E.O.
at its Eighth Annual Conference
Fort Lauderdale, Florida
May 1972

WHEREAS, extradition requests are rapidly increasing in number; and

WHEREAS, legal interpretations, policies and procedures vary among the states; and

WHEREAS, the need for reform of the present extradition law and procedure has been previously stated by this association, the National Governor's Conference, and the National District Attorney's Association;

THEREFORE, BE IT RESOLVED that the National Association of Extradition Officials under the direction of the Executive Committee should continue their efforts to secure appropriate funding for this reform effort with the National Governor's Conference, Law Enforcement Assistance Administration, and any other private or public funding organization.

RESOLUTION #15

EXTRADITION OFFICE PROCEDURE

Resolution adopted by the N.A.E.O.
at its Eighth Annual Conference
Fort Lauderdale, Florida
May 1972

WHEREAS, the office procedures and the mechanical processing of extraditions and renditions vary from state to state; and

WHEREAS, much confusion, delay and lack of communication result from such varied office procedures; and

WHEREAS, many states are unaware of the many innovative, improved and refined changes that have been developed in extradition office procedure;

THEREFORE, BE IT RESOLVED that the Office Procedure Workshop prepare a detailed list of all ideas that evolved from the 1972 National Association of Extradition Officials' conference and distribute such list to the various states as suggestions for their consideration and use.

RESOLUTION #16

APPOINTMENT OF PUBLICATION COMMITTEE

Resolution adopted by the N.A.E.O.
at its Eighth Annual Conference
Fort Lauderdale, Florida
May 1972

WHEREAS, the National Association of Extradition Officials has an apparent need for a continuing Publication Committee which will function throughout the year;

THEREFORE, BE IT RESOLVED by the National Association of Extradition Officials at its Eighth Annual Conference, at Fort Lauderdale, Florida, the President be directed to appoint a Publication Committee with the approval of the Executive Committee, such Committee to complete arrangements with the Council of State Governments for the mailing of materials to the membership, to prepare and publish a Directory of the Association, a manual for extradition officers, establishing a library of publications in the field of extradition and undertake such other projects in the field of publication as may be approved by the Executive Committee which would be beneficial to the members of the Association.

RESOLUTION #17

APPOINTMENT OF UNIFORM FORMS COMMITTEE

Resolution adopted by the N.A.E.O.
at its Eighth Annual Conference
Fort Lauderdale, Florida
May 1972

WHEREAS, extradition forms vary with each state; and

WHEREAS, this variation hinders the extradition process in approving and processing extradition request;

THEREFORE, BE IT RESOLVED that the President be directed to appoint a Uniform Forms Committee with the approval of the Executive Committee, such forms committee to have an appropriate budget in order to continue the following primary projects: (a) Development of a model application for requisition form; (b) That an effort be made to implement previously approved model forms in all states.

RESOLUTION #18

REVISION OF UNIFORM DETAINER ACT AND PAROLE REVOCATION PROBLEMS

Resolution adopted by the N.A.E.O.
at its Tenth Annual Conference
Biloxi, Mississippi
May 1974

WHEREAS, this Association has for several years endeavored to secure funding from the Law Enforcement Assistance Administration for a study of the Uniform Extradition Act; and

WHEREAS, as a result of recent decisions of the Supreme Court of the United States, it appears imperative that such a study be undertaken to include possible revisions of the Uniform Detainer Act and the problems attendant to the revocation of parole in states to which a parolee has fled;

NOW, THEREFORE, BE IT RESOLVED by the National Association of Extradition Officials at their 10th Annual Meeting in Biloxi, Mississippi, that the Executive Committee of the Association be directed to continue its efforts in this regard and to seek such funding as is possible to undertake such studies to meet the changing needs of our society.

RESOLUTION #19

AFFIDAVIT OF IDENTIFICATION AND EXTRADITION CASES INVOLVING NON-SUPPORT, BAD CHECKS, REMOVAL OF MORTGAGED PROPERTY, AND CHILD STEALING

Resolution adopted by the N.A.E.O.
at its Twelfth Annual Conference
Annapolis, Maryland
May 1976

WHEREAS, extradition officials of the various member states change from year to year; and

WHEREAS, many of the current delegates are not aware of and did not participate or join in previous resolutions of the National Association of Extradition Officials; and

WHEREAS, many of the problems addressed by previous resolutions still persist;

NOW, THEREFORE BE IT RESOLVED by the National Association of Extradition Officials at their 12th Annual Conference in Annapolis, Maryland, that the following resolutions, positions and recommendations of the Association are supported, affirmed, and adopted:*/

1. Affidavit of Identification

   Wherever possible, all requisitions should contain an affidavit of identification with appropriate supporting documents, including, but not limited to physical descriptions, aliases, photographs, and/or fingerprints.

2. Nonsupport

   The civil enforcement provisions of the Uniform Reciprocal Enforcement of Support Act should be employed prior to seeking extradition. If those provisions have not been employed, or if they have been employed without success, an explanatory affidavit should be included among the papers supporting the requisition. The terms "nonsupport" as used herein is used in its generic sense, and includes similarly entitled offenses, such as abandonment of minor children, or failure to provide.

3. Bad Checks

Extradition should neither be requested nor granted on the charge of insufficient funds checks unless the check or aggregate of checks totals more than $100, or unless special circumstances exist showing that the accused is a chronic violator.

4. Removal of Mortgaged Property

The amount of money involved should have little bearing. Extradition for removal of mortgaged property should be requested or granted only in cases where the evidence clearly indicates criminality. For example, if the accused has made regular payments on the merchandise and perhaps owes only a reasonable balance, extradition should not be sought as this is essentially a civil matter. However, if the accused purchased merchandise and departed the jurisdiction without making any payments, and the merchandise has not been returned, criminal intent is much clearer and extradition generally should be granted.

5. Child Stealing

Each case should stand on its own merits. Where appropriate, cooperative efforts should be made to accomplish the return of both the accused and the child to the demanding state for civil litigation of the custody dispute.

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* All resolutions, positions, and recommendations stated herein were adopted in substance at the Seventh Annual Conference of the National Association of Extradition Officials, May, 1971, at Lake Tahoe, Nevada.

RESOLUTION #20

EXTRADITION FEES

Resolution adopted by the N.A.E.O.
at its Twelfth Annual Conference
Annapolis, Maryland
May 1976

WHEREAS only six of the United States at present charge fees for processing extradition papers; and

WHEREAS the collection of these fees provides a minimum of income for these few states, particularly in view of paperwork involved in collecting the fees; and

WHEREAS securing from the State treasury the required payment to accompany extradition requests to these states greatly impedes the extradition process; and

WHEREAS time is of the essence in most extradition cases, and any impediment to the process may result in the release of a detained individual before his return to stand trial; and

WHEREAS it is in the best interests of criminal justice to expedite the extradition process in the spirit of the Uniform Extradition Act;

NOW, THEREFORE BE IT RESOLVED, that the National Association of Extradition Officials actively encourage officials of states now levying extradition fees to take immediate steps to have these charges abolished.

RESOLUTION #21

ADOPTION BY ALL STATES OF UNIFORM CRIMINAL EXTRADITION ACT AND INTERSTATE COMPACT ON DETAINERS

Resolution adopted by the N.A.E.O.
at its Fourteenth Annual Conference
Atlanta, Georgia
May 1978

WHEREAS, it is the expressed purpose of the National Association of Extradition Officials that uniform procedures be adopted by the jurisdictions within the United States to facilitate and expedite interstate renditions; and

WHEREAS, to date, all states except North Dakota, South Carolina, and Mississippi have adopted the Uniform Criminal Extradition Act, and all states except Louisiana and Mississippi have adopted the Interstate Compact on Detainers;

THEREFORE, BE IT RESOLVED, by the National Association of Extradition Officials at its 14th Annual Conference in Atlanta, Georgia, that this Association recommends to the aforementioned states adoption of the Uniform Criminal Extradition Act and/or the Interstate Compact on Detainers; and

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded by the Secretary of the Association to the Governors, Secretaries of State, and Attorneys General of the aforementioned states.

RESOLUTION #22

LODGING OF N.A.E.O. MATERIALS WITH LIBRARY OF CONGRESS

Resolution adopted by the N.A.E.O.
at its Fourteenth Annual Conference
Atlanta, Georgia
May 1978

WHEREAS, one of the expressed purposes of the National Association of Extradition Officials is to exchange and disseminate information regarding extradition and related procedures; and

WHEREAS, materials have been printed by and for the Association in furtherance of this purpose and serve as a competent and important source of information regarding extradition and related procedures;

THEREFORE BE IT RESOLVED, by the National Association of extradition Officials at its 14th Annual Conference in Atlanta, Georgia, that the Executive Committee of the Association investigate the possibility of lodging the aforesaid materials with the Library of Congress.

RESOLUTION #23

ATTENDANCE BY N.A.E.O. AT MEETINGS OF NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

Resolution adopted by the N.A.E.O.
at its Fourteenth Annual Conference
Atlanta, Georgia
May 1978

WHEREAS, the National Conference of Commissioners on Uniform State Laws has been established for the purpose of reviewing and improving interstate compacts and laws; and

WHEREAS, the National Association of Extradition Officials has an abiding interest and concern in the improvement and clarification of such compacts and laws;

THEREFORE, BE IT RESOLVED, by the National Association of Extradition Officials at its 14th Annual Conference in Atlanta, Georgia, that this Association have a member in attendance at all meetings of the National Conference of Commissioners on Uniform State Laws wherein the Uniform Rendition and Extradition Act will be presented, discussed or proposed.

RESOLUTION #24

ELIMINATION OF CROSS-CERTIFICATION REQUIREMENT FOR DOCUMENTS ACCOMPANYING EXTRADITION REQUISITIONS

Resolution adopted by the N.A.E.O.
at its Fourteenth Annual Conference
Atlanta, Georgia
May 1978

WHEREAS, a number of states require that a charging document accompanying an extradition requisition from a demanding state be certified as authentic by the governor of the demanding state and further require that said document be cross-certified; and

WHEREAS, the Uniform Criminal Extradition Act and 18 U.S.C. Section 3182 require only that the charging document accompanying an extradition requisition from a demanding state be certified as authentic by the governor of the demanding state; and

WHEREAS, it is the expressed purpose of the National Association of Extradition Officials to secure uniformity in the interpretation, practice, and procedure of extraditions effectuated pursuant to the Uniform Criminal Extradition Act, and related laws;

THEREFORE, BE IT RESOLVED, by the National Association of Extradition officials at its 14th Annual Conference in Atlanta, Georgia, that this Association recommends to officials of states now requiring from demanding states such cross-certifications that this requirement be abolished.

RESOLUTION #25

EVALUATION OF PROPOSED REVISION OF UNIFORM EXTRADITION LAWS

Resolution adopted by the N.A.E.O.
at its Fourteenth Annual Conference
Atlanta, Georgia
May 1978

WHEREAS, at the 14th Annual Conference of the National Association of Extradition Officials in Atlanta, Georgia, the Honorable William C. Ball, Chairman of the Special Committee on Uniform Rendition and Extradition Act, and the Honorable John J. Murphy, member of said special committee, have presented to this Association comments regarding a proposed revision of the uniform extradition laws, with copies of the proposal to be forwarded at a later date to members of this Association; and

WHEREAS, the National Association of Extradition Officials has been advised that the Special Committee on Uniform Rendition and Extradition Act will present the first draft of the aforementioned proposal to the National Conference of Commissioners on Uniform State Laws at its July 28th - August 4th, 1978 meeting in New York City; and

WHEREAS, the complexities of extradition law and procedure and the impact of such matters on the states and their citizens require that any proposed revision of the uniform extradition laws be carefully examined and evaluated by those state officials particularly knowledgeable in the fields of extradition law and procedure; and

WHEREAS, the National Association of Extradition Officials is composed of representatives of the offices of the Governors, Attorneys General, and Secretaries of State, who handle all extradition matters in their respective states;

THEREFORE, BE IT RESOLVED, by the National Association of Extradition Officials at its 14th Annual Conference in Atlanta, Georgia, that the Association strongly recommends to the National Conference of Commissioners on Uniform State Laws that it delay consideration of the aforementioned proposed revision until the National Association of Extradition Officials has had sufficient time to study the proposal and to offer its comments and recommendations; and

BE IT FURTHER RESOLVED, that the President of this Association be authorized to appoint a committee to study the proposal of the Special Committee on Uniform Rendition and Extradition Act and to present its findings to the Association at is 15th Annual Conference in May 1979 for appropriate action; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of this Association to the Special Committee on Uniform Rendition and Extradition Act and the National Conference on Uniform State Laws.

RESOLUTION #26

N.A.E.O. REJECTS PROPOSED DRAFT OF UNIFORM EXTRADITION AND RENDITION ACT

Resolution adopted by the N.A.E.O.
at its Fifteenth Annual Conference
Carson City, Nevada
May 1979

WHEREAS, the National Conference of Commissioners on Uniform State Laws is considering a proposed revision of the uniform extradition laws, the latest draft of which is dated May 3, 1979; and

WHEREAS, the National Association of Extradition Officials is composed of representatives of the offices of the Governors, Attorneys General, and Secretaries of State, who hand all extradition matters in their respective states; and

WHEREAS, the content and actual operation of laws concerned with interstate extradition and rendition are uniquely within the knowledge and experience of the National Association of Extradition Officials and its various member states; and

WHEREAS, the members of the National Association of Extradition Officials, duly assembled at their 15th Annual Conference, have carefully studied and considered the latest draft of the proposed Uniform Extradition and Rendition Act and have generally found it to be unacceptable for the following reasons:

1. No substantial shortcomings in the current legal provisions of operation of the Uniform Criminal Extradition Act have been demonstrated;

2. There has been no satisfactory reason given to justify the bifurcated procedures contemplated by Article III and Article IV of the proposed law;

3. It is extremely unwise to propose a completely new law at this time in view of the fact that it took forty-four years to get a total of forty-seven states to adopt the terms of the present Uniform Criminal Extradition Act, a law which, with a few minor changes, may reasonably be expected to continue to meet the needs of law enforcement for years to come;

4. The present Uniform Criminal Extradition Act has an extensive and well established case law history which is vital to its interpretation and implementation, a situation that would not be available under the proposed law for many years;

5. The type of judicial rendition contemplated by Article IV of the

proposed law is an unwarranted and unjustified interference with the historic powers of the chief executives of the various states;

6. Rather that expediting the process, the proposed law is likely to cause more delay in returning the fugitives from justice;

7. Eliminating the concept of fugitivity and consideration of the issue under Article III and Article IV of the proposed law may work more than an occasional injustice;

8. The contemplated changes in required documentation, i.e., elimination of actual charging documents, raises serious constitutional questions;

NOW, THEREFORE, BE IT RESOLVED, by the National Association of Extradition Officials at its 15th Annual Conference in Carson City, Nevada, that this Association strongly and emphatically urges the National Conference of Commissioners on Uniform State Laws not approve and recommend to the states for adoption the proposed Uniform Extradition and Rendition Act; and

BE IT FURTHER RESOLVED, that the Executive Committee of the National Association of Extradition Officials draft a letter detailing the reasons that the proposed Uniform Extradition and Rendition Act is unacceptable; and

BE IT FURTHER RESOLVED, that the National Association of Extradition Officials stands ready and willing to assist and cooperate with members of the National Conference of Commissioners on Uniform State Laws in preparing and recommending appropriate amendments to the present Uniform Criminal Extradition Act, maintaining said act's basic approach and provisions; and

BE IT FURTHER RESOLVED, that copies of this resolution and the above-mentioned letter prepared by the Executive Committee be provided by the Secretary of this Association to all members of the National Conference of Commissioners on Uniform State Laws and to the Governors, Attorneys General, and Secretaries of State of the various states.

RESOLUTION #27

N.A.E.O. MEMBERS TO FORWARD SUGGESTIONS ON UNIFORM EXTRADITION AND RENDITION ACT

Resolution adopted by the N.A.E.O.
at its Fifteenth Annual Conference
Carson City, Nevada
May 1979

WHEREAS, the National Association of Extradition Officials, duly assembled at their 15th Annual Conference, have unanimously passed a resolution strongly and emphatically urging that the National Conference of Commissioners on Uniform State Laws not approve and recommend to the states for adoption the proposed Uniform Extradition and Rendition Act; and

WHEREAS, the National Association of Extradition Officials in said resolution has also resolved that its Executive Committee will prepare a letter detailing the reasons that the proposed Uniform Extradition and Rendition Act is unacceptable;

NOW, THEREFORE, BE IT RESOLVED, by the National Association of Extradition Officials at its 15th Annual Conference in Carson City, Nevada, that all members of the Association are affirmatively directed to make written suggestions and comments regarding the proposed Uniform Extradition and Rendition Act to their regional vice-presidents no later that July 1, 1979; and

BE IT FURTHER RESOLVED, that the regional vice-presidents gather the requested information and forward it to the Executive Committee.

RESOLUTION #28

N.A.E.O. ESTABLISH A CENTRAL DEPOSITORY FOR MATERIALS

Resolution adopted by the N.A.E.O.
at its Fifteenth Annual Conference
Carson City, Nevada
May 1979

WHEREAS, it has been recommended that a "brief bank" be created and maintained by the National Association of Extradition Officials to provide a central depository for legal briefs, court opinions, and attorney general opinions dealing with extradition and related procedures; and

WHEREAS, concern has been expressed as to the feasibility and workability of such a project, including the availability of human and financial resources to create and maintain such a system;

NOW, THEREFORE, BE IT RESOLVED, by the National Association of Extradition Officials at its 15th Annual Conference in Carson City, Nevada, that the Executive Committee of this Association evaluate the "brief bank" proposal and present its recommendations to the Association at its next annual conference.

RESOLUTION #29

N.A.E.O. APPROVES UNIFORM EXTRADITION AND RENDITION ACT

Resolution adopted by the N.A.E.O.
at its Sixteenth Annual Conference
San Antonio, Texas
May 1980

WHEREAS , the National Association of Extradition Officials is comprised of those representatives of the Governors, Attorneys General and Secretaries of State of the various states who are charged with the responsibility of administering the interstate extradition laws; and

WHEREAS, the National Conference of Commissioners on Uniform State Laws is considering approval of a proposed revision of the interstate extradition laws, which has been entitled the Uniform Extradition and Rendition Act; and

WHEREAS, a representative of the National Association of Extradition Officials has regularly attended and participated in the meetings of the drafting committee of the National Conference of Commissioners on Uniform State Laws, and has reported upon the contents and apparent meaning of the proposed Uniform Extradition and Rendition Act; and

WHEREAS, the delegates to the Sixteenth Annual Conference of the National Association of Extradition Officials have carefully reviewed and discussed what purports to be the latest draft of the proposed Uniform Extradition and Rendition Act, dated on or about April 13, 1980, a copy of which is attached to this Resolution; and

WHEREAS, the delegates to the Sixteenth Annual Conference of the National Association of Extradition Officials have reconsidered a resolution adopted at the Fifteenth Annual Conference in which the delegates stated their opposition to the draft of the proposed Uniform Extradition and Rendition Act which was then under consideration;

NOW, THEREFORE, BE IT RESOLVED that the delegates to the Sixteenth Annual Conference of the National Association of Extradition Officials generally believe that, with the exception of Article IV and Article V, section 5-105, the latest draft of the proposed Uniform Extradition and Rendition Act represents an improvement in the laws which govern interstate extradition; and

MORE SPECIFICALLY, the delegates to the Sixteenth Annual Conference of the National Association of Extradition Officials agree with the concept that a Governor ought to have the right to delegate his authority to sign requisitions and rendition warrants, that an arrest warrant, broadly defined, ought to be the critical document in an extradition proceeding and that particular "charging" documents ought not be required, that the voluntary return of a person should be permitted only with the consent of the state in which "charges" are pending, and that there should be a uniform rule prohibiting bail after a waiver or other final order of extradition; but

BE IT FURTHER RESOLVED, that the delegates to the Sixteenth Annual Conference of the National Association of Extradition Officials have certain reservations about some provisions of the proposed Uniform Extradition and Rendition Act which may render interstate extradition more confusing, cumbersome and time consuming than under current law. In particular, the delegates to the Sixteenth Annual Conference of the National Association of Extradition Officials believe that Article IV of the proposed Uniform Extradition and Rendition Act is an unnecessary provision which will generate greater confusion, more delay and a general lack of uniformity in interstate extradition resulting in less flexibility and cooperation between the states than presently exists under current laws. For these reasons, the delegates to the Sixteenth Annual Conference of the National Association of Extradition Officials do not support Article IV of the proposed Uniform Extradition and Rendition Act;

BE IT FURTHER RESOLVED, that in the event that the National Conference of Commissioners on Uniform State Laws adopts Article IV of the proposed Uniform Extradition and Rendition Act, the delegates to the Sixteenth Annual Conference of the National Association of Extradition Officials wish to express their concern regarding certain provisions of Article IV;

MORE SPECIFICALLY, the delegates to the Sixteenth Annual Conference of the National Association of Extradition Officials are concerned that Section 4-103, when read in conjunction with Section 3-101 of the proposed Uniform Extradition and Rendition Act, does not permit the Governor of the "asylum" state to recognize and act upon a request for judicial rendition and thus will require officials in the "requesting" state to resubmit extradition documents through the Executive Authority of that state, adding greatly to the time and inconvenience of the extradition process; and

FURTHER, that the increased time and inconvenience described in the preceding paragraph will be exacerbated if and when the various Governors adopt policies which require, under Section 4-103, that Article IV of the Uniform Extradition and Rendition Act be utilized;

THEREFORE, BE IT FURTHER RESOLVED, that the delegates to the Sixteenth Annual Conference of the National Association of Extradition Officials recommend that Section 4-103 of the proposed Uniform Extradition and Rendition Act be amended to provide that, notwithstanding the provisions of Section 3-101, the Governor may recognize and act upon a request for judicial rendition under Article IV as if it were a request for extradition under Article III; and

BE IT FURTHER RESOLVED, that the delegates to the Sixteenth Annual Conference of the National Association of Extradition Officials oppose Section 5-105 of the proposed Uniform Extradition and Rendition Act for the reason that this provision is highly controversial which has nothing to do with the process of extradition and should not be a part of the Uniform Law.

RESOLUTION #30

INTERSTATE COMPACT ON DETAINERS:
RECOMMENDED CHANGES IN ARTICLE IV PROCEDURES

Resolution adopted by the N.A.E.O.
at its Seventeenth Annual Conference
Williamsburg, Virginia
May 1981

WHEREAS, the National Association of Extradition Officials is comprised of those representatives of the Governors, Attorneys General, and other state officials who are charged with the responsibility of administering and enforcing the laws concerning the interstate rendition of persons charged with crime, and

WHEREAS, the National Association of Extradition Officials is concerned with the lawful and successful administration of the Interstate Agreement on Detainers, and

WHEREAS, the Supreme Court of the United States, in Cuyler v. Adams, U.S. __,101 S.Ct. 703, has held that whenever a prosecutor demands custody of a prisoner under Article IV of the Interstate Agreement on Detainers, the prisoner is statutorily entitled to the procedural protections provided in state extradition laws, and

WHEREAS, the decision in Cuyler v. Adams, requires certain immediate changes in the administration of the Interstate Agreement on Detainers, and

WHEREAS, because the successful administration of the Interstate Agreement on Detainers requires uniform application of Cuyler v. Adams, the National Association of Extradition Officials deem it appropriate and desirable to recommend certain changes in the administration of that agreement;

NOW, THEREFORE, BE IT RESOLVED as follows:

(1) That in order to ensure that prisoners fully understand their rights under Cuyler v. Adams, the prisoner should be advised of those rights in writing through the appropriate amendment of Form I, which has been prescribed and adopted by those responsible for the administration of the Interstate Agreement on Detainers; and

(2) That every request for the temporary custody of a prisoner pursuant to Article IV of the Interstate Agreement on Detainers (Form V) should be accompanied by (a) certified copies of the complaint, information or indictment, (b) certified copies of the arrest warrant,

and (c) certified copies a fingerprint card, photograph or other evidence showing the identity of the person whose custody is requested, including, where appropriate, a supporting affidavit; and

(3) That, to the extent that the law of the state of incarceration requires that a fugitive facing extradition or waiver of extradition, a prisoner whose custody is requested under Article IV of the Interstate Agreement on Detainers should always be taken before a court prior to any transfer under that article; and

(4) That this initial court appearance may not be waived, and the prisoner should not be asked, encouraged or permitted to waive the initial court appearance and that any agreement to a temporary transfer of custody (Form V-A) should be executed in court; and

(5) That the official who takes the prisoner to court for his initial appearance should provide the court with a copy of the prosecutor's request for custody (Form V) and the supporting documents; and

(6) That the official who takes the prisoner to court for his initial appearance should also provide the court with a form similar to the attached suggested form (Form V-A), upon which the prisoner may admit that he is the same person wanted by the prosecutor who has requested his custody and upon which the prisoner may waive review by the Governor and further judicial proceedings prior to his transfer to the requesting state; this form should be executed in quadruplicate so as to provide one copy for the court's file, one copy for the prosecutor who has requested custody, one copy for the prisoner's file, and one for the prisoner.

FORM V-A

The official who takes the prisoner to court pursuant to a prosecutor's request for temporary custody should provide four (4) copies of this form to the court. If the prisoner wishes to admit that he is the same person whose custody has been requested, and to return to the requesting state, the prisoner should complete each copy of this form in the presence of the court, which should then endorse each copy on the space provided. One copy should be filed with the court, one copy should be placed in the prisoner's file, one copy should be provided to the prosecutor who requested custody, and one copy should be provided to the prisoner.

PRISONER'S AGREEMENT TO TEMPORARY TRANSFER OF CUSTODY

I, _____, _____,
(Prisoner's full name) (Prison number)

am currently incarcerated at _____,
(Institution)

_____. Without admitting my guilt
(Address)

or innocence, I acknowledge that I am the same person named in the

attached request for temporary custody (Form V). I have been advised that I am entitled to challenge that request for temporary custody by filing a petition for writ of habeas corpus. I have also been advised that the Governor may intercede in my behalf within thirty (30) days of the request for temporary custody. I wish to waive my right to file a petition for writ of habeas corpus and agree to waive the thirty (30) day period so that I may be transferred as soon as possible.

_____
SIGNED

_____
DATED

_____
JUDGE

RESOLUTION #31

COSTS OF EXTRADITION

Resolution adopted by the N.A.E.O.
at its Twenty-Second Annual Conference
Denver, Colorado
May 1986

WHEREAS, it is the express purpose of the National Association of Extradition Officials that uniform practices and procedures be adopted by the jurisdictions within the United States to facilitate and expedite the interstate rendition of fugitives; and

WHEREAS, it is the purpose and intent of the Uniform Criminal Extradition Act and Article IV, section 2, clause 2 of the United States Constitution that the interstate extradition of fugitives be a cooperative and reciprocal arrangement between the States; and

WHEREAS, it is and has been the general practice among most jurisdictions throughout the country that the asylum state, or its appropriate political subdivision, department, or agency, bear the routine and non-extraordinary costs incurred in connection with the extradition of fugitives, including the housing and feeding of detained fugitives and transportation of said fugitives to and from court proceedings within the asylum state, pending the fugitive's rendition to the demanding state's agents; and

WHEREAS, it would undermine the cooperative and reciprocal nature of extradition if asylum states, or their political subdivisions, agencies or departments, seek reimbursement from demanding states, their political subdivisions, agencies or departments, for the routine and non-extraordinary expenses incurred in connection with the extradition of fugitives;

NOW, THEREFORE, BE IT RESOLVED by the National Association of Extradition Officials at its Twenty-Second Annual Conference in Denver, Colorado, that the Association recommends that asylum states, their political subdivisions, departments and agencies continue to bear the routine and non-extraordinary expenses associated with the interstate extradition of fugitives and that they not seek reimbursement for such expenses from the demanding states, their political subdivisions, agencies or departments.

RESOLUTION #32

BAIL AND APPEAL PROCEDURES

Resolution adopted by the N.A.E.O.
at its Twenty-Second Annual Conference
Denver, Colorado
May 1986

WHEREAS, it is the express purpose of the National Association of Extradition Officials that uniform practices and procedures be adopted by the jurisdictions within the United States to facilitate and expedite the interstate rendition of fugitives; and

WHEREAS, it is the express purpose of the Uniform Criminal Extradition Act that it be construed and interpreted so as to effectuate its general purpose to make uniform the law of those states which enact it; and

WHEREAS, the Uniform Criminal Extradition Act does not contain any provision authorizing the release on bail of a fugitive once he has been arrested pursuant to a warrant issued by the executive authority of the asylum state; and

WHEREAS, judicial decisions in most states which have addressed the issue have ruled that a fugitive has no right to bail once he has been arrested pursuant to a warrant issued by the executive authority of the asylum state; and

WHEREAS, notwithstanding the general rule of law that bail is not available to a fugitive who has been arrested upon a Governor's warrant, some states permit a fugitive to be released on bail after his arrest on a Governor's warrant; and

WHEREAS, in several states a fugitive who has been arrested upon a Governor's warrant has an automatic right to appeal from the denial of a petition for writ of habeas corpus contesting his extradition and can delay his extradition for months while the appellate procedures in the asylum state are completed; and

WHEREAS, it is inconsistent with the purpose of interstate extradition as a "summary executive proceeding" to permit a fugitive to be released on bail after he has been arrested upon a warrant issued by the executive authority of the asylum state; and

WHEREAS, it frustrates the prompt extradition of fugitives from justice to allow said fugitives to delay their extradition for lengthy periods of time during the appellate review process; and

WHEREAS, court proceedings in asylum states dealing with the interstate extradition of fugitives should be given expedited consideration by the courts of the asylum states and the appeal rights of fugitives contesting their extraditions should be subject to strict time limits so as to avoid unnecessary and excessive delays which frustrate the administration of justice;

NOW, THEREFORE, BE IT RESOLVED by the National Association of Extradition Officials at its Twenty-Second Annual Conference in Denver, Colorado, that the Association recommends that all states adopt and implement procedures and legislation, if necessary, to deny a fugitive bail once he has been arrested pursuant to a warrant issued by the executive authority of the asylum state; and

BE IT FURTHER RESOLVED, that the Association encourages all states to adopt and implement procedures and, if necessary, legislation to require that extradition matters by given expedited consideration by the courts of the asylum states and that the appeal rights of fugitives from justice by subject to strict time limits.

RESOLUTION #33

INTERNATIONAL EXTRADITION

Resolution adopted by the N.A.E.O.
at its Twenty-Second Annual Conference
Denver, Colorado
May 1986

WHEREAS, the National Association of Extradition Officials recognizes that the subject of international extradition is a matter which rests exclusively within the power of the federal government; and

WHEREAS, the National Association of Extradition Officials has a strong interest in the prompt extradition of individuals charged with or convicted of crimes in the United States who have fled to an other country; and

WHEREAS, in many cases fugitives who have fled to another country commit, are charged with, and are convicted of crimes in that country; and

WHEREAS, in such situations it is generally not possible for the United States or an individual state to obtain temporary custody of a fugitive who has been convicted of a crime in another country and who is serving a sentence of imprisonment, because of the absence of a provision in the extradition treaty authorizing the assumption of such temporary custody; and

WHEREAS, it would strengthen the administration of justice if, in appropriate cases, the United States or an individual state could, with the agreement of the foreign country, assume temporary custody of a convicted person in the foreign country for the purpose of bringing him to trial in the United States and then returning him to the foreign country to complete any sentence of imprisonment there, and thereafter be returned to the United States to complete any term of imprisonment in this country; and

WHEREAS, the inability of the United States or an individual state to assume such temporary custody under these circumstances can result in excessive delays in extraditing a fugitive to this country and, in some instances, could result in the inability of the United States or an individual state to prosecute such a fugitive due to the passage of time;

NOW, THEREFORE, BE IT RESOLVED by the National Association of Extradition Officials at its Twenty-Second Annual Conference in Denver, Colorado, that the Association recommends to the Secretary of State of the United Sates and the Office of International Affairs within the Department of Justice that it seek, with respect to appropriate foreign countries, that extradition treaties include a provision authorizing the United States and foreign country to agree to a transfer of temporary custody of convicted fugitives, for the purpose of bringing said fugitive to trial in the appropriate jurisdiction within either the United States or the foreign country;

and

BE IT FURTHER RESOLVED that such treaty provisions also authorize the return of such fugitives to the country in which they were originally incarcerated to complete their terms of imprisonment there, and further authorize the return of such fugitives to the country requesting temporary custody for the purpose of completing any period of imprisonment there.

RESOLUTION #34

STUDY OF INTERSTATE AGREEMENT ON DETAINERS

Resolution adopted by the N.A.E.O.
at its Twenty-Second Annual Conference
Denver, Colorado
May 1986

WHEREAS, the Interstate Agreement on Detainers (hereinafter referred to as the "IAD") was drafted in 1957 and has been adopted by 48 states, the District of Columbia and the Federal Government; and

WHEREAS, Article I of the IAD expressly states that untried charges based upon detainers against prisoners "produce uncertainties which obstruct programs of prisoner treatment and rehabilitation"; and

WHEREAS, in the years subsequent to the creation of the IAD, the penological purposes of prisoner treatment and rehabilitation have become less important factors in this country's correctional system; and

WHEREAS, in 1981 the United States Supreme Court decided Cuyler v. Adams, 449 U.S. 703 in which it concluded that under Article IV of the IAD, an incarcerated prisoner is entitled to the same procedural protections he would be entitled to under the Uniform Criminal Extradition Act; and

WHEREAS, in Cuyler v. Adams, supra, the United States Supreme Court also held that the IAD is a congressionally approved interstate compact, the interpretation of which presents a question of federal law; and

WHEREAS, as a result of the Supreme Court's decision in Cuyler v. Adams, supra, the process for obtaining temporary custody of an incarcerated prisoner under Article IV of the IAD is virtually identical to the procedure under the Uniform Criminal Extradition Act; and

WHEREAS, as a result of the Supreme Court's decision in Cuyler v. Adams, supra, it is now unclear whether the individual states can amend the IAD without congressional approval; and

WHEREAS, in light of the passage of time since the IAD was originally drafted in 1957, and in view of the Supreme Court's decision in Cuyler v. Adams, supra, a re-examination of the purposes and procedures of the IAD is necessary and desirable;

NOW, THEREFORE, BE IT RESOLVED by the National Association of Extradition Officials at its Twenty-Second Annual Conference in Denver, Colorado, that the President of the Association appoint a committee to conduct a study of the Interstate Agreement on Detainers for the purpose of determining whether the IAD should be substantially amended by its party states; and

BE IT FURTHER RESOLVED, that the committee so appointed by the President of the National Association of Extradition Officials prepare a report, including any suggested model legislation, to be presented at the Twenty-Third Annual Conference of the National Association of Extradition Officials in Boston, Massachusetts in May of 1987.

RESOLUTION #35

INTERSTATE PROBATION AND PAROLE COMPACT

Resolution adopted by the N.A.E.O.
at its Twenty-Second Annual Conference
Denver, Colorado
May 1986

WHEREAS, it is the express purpose of the National Association of Extradition Officials that uniform practices and procedures be adopted by the jurisdictions within the United States to facilitate and expedite the interstate rendition of fugitives; and

WHEREAS, it is the purpose and intent of the Uniform Criminal Extradition Act and Article IV, section 2, clause 2 of the United States Constitution that the interstate extradition of fugitives be a cooperative and reciprocal arrangement between the states; and

WHEREAS, there exists an Interstate Probation and Parole Compact to which all states are signatory and which Compact provides that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole; and

WHEREAS, all legal requirements to obtain extradition of fugitives from justice are expressly waived on the part of the party states; and

WHEREAS, the courts have ruled: 1) Prior waiver of extradition as a condition of parole is not an unreasonable or coerced condition; 2) Prior waiver is enforceable if the offender had general knowledge and understanding of the waiver; 3) Extradition is not an exclusive remedy; 4) There is need only to establish identity of the offender and the authority of the retaking officer; and

WHEREAS, prior waivers of extradition as a condition of parole or probation are clearly enforceable and provide an important alternative to extradition or waiver under the Uniform Criminal Extradition Act;

NOW, THEREFORE, BE IT RESOLVED by the National Association of Extradition Officials at its Twenty-Second Annual Conference in Denver, Colorado, that the Association recommends that whenever and wherever possible, the prior waiver provisions for parolees and probationers be used to return absconding parolees and probationers rather than formal extradition proceedings.

RESOLUTION #36

PRE-SIGNED WAIVERS OF EXTRADITION

Resolution adopted by the N.A.E.O.
at its Twenty-Second Annual Conference
Denver, Colorado
May 1986

WHEREAS, it is the purpose of the National Association of Extradition Officials to encourage all states to adopt uniform policies and procedures so as to facilitate the extradition of fugitives from justice; and

WHEREAS, it is the purpose of the Uniform Criminal Extradition Act that it be construed liberally so as to effectuate its purpose of making uniform the laws of those states which have adopted it; and

WHEREAS, the Uniform Criminal Extradition Act authorizes the waiver of extradition by fugitives and provides that the waiver procedures specified in the Act are not to be deemed exclusive; and

WHEREAS, several states have adopted policies, procedures and/or legislation requiring that persons execute a pre-signed waiver of extradition as a condition of probation, parole, bail, or other release; and

WHEREAS, appellate judicial decisions which have considered the legality of pre-signed waivers of extradition have, almost unanimously, upheld the validity of such pre-signed waivers of extradition; and

WHEREAS, several states have enacted legislation specifically providing that such pre-signed waivers of extradition should be honored; and

WHEREAS, numerous states have adopted the Interstate Compact for the Supervision of Parolees and Probationers (hereinafter referred to as the "ICSPP") whereby a probationer or parolee in one state may be supervised in another party state; and

WHEREAS, the ICSPP provides that in order to participate in the Compact, a parolee or probationer must sign a waiver of extradition to the sending state and further provides that no formal extradition proceedings shall be necessary to return a probationer or parolee to the sending state under the Compact; and

WHEREAS, appellate judicial decisions which have considered pre-signed waivers of extradition under the ICSPP have almost unanimously upheld their validity; and

WHEREAS, notwithstanding the validity of pre-signed waivers of extradition, the courts in some states have refused or are reluctant to permit the extradition of individuals under the terms of such pre-signed waivers of extradition; and

WHEREAS, pre-signed waivers of extradition are valid and should be recognized by the courts of the asylum state;

NOW, THEREFORE, BE IT RESOLVED by the National Association of Extradition Officials at its Twenty-Second Annual Conference in Denver, Colorado, that the Association recommends that all states adopt appropriate procedures, policies and if necessary, legislation recognizing the validity of pre-signed waivers of extradition and requiring the courts and all other appropriate officials within the asylum state to recognize and enforce such pre-signed waivers of extradition.

RESOLUTION #37

N.A.E.O. ACCEPTS COMMITTEE RECOMMENDATION ON IAD STUDY

Resolution adopted by the N.A.E.O.
at its Twenty-Third Annual Conference
Boston, Massachusetts
May 1987

WHEREAS, at the Twenty-Second Annual Conference of the National Association of Extradition Officials in Denver, Colorado, it was resolved that "the President of the Association appoint a committee to conduct a study of the Interstate Agreement on Detainers for the purpose of determining whether the IAD should be substantially amended by its party states"; and "that the committee so appointed ... prepare a report, including any suggested model legislation, to be presented at the Twenty-Third Annual Conference of the National Association of Extradition Officials in Boston, Massachusetts in May of 1987"; and

WHEREAS, the President of the Association did duly appoint a committee to conduct such a study and to prepare such report; and

WHEREAS, the committee has completed its study and has prepared its report and has submitted its findings to the President and to the membership of the National Association of Extradition Officials at its Twenty-Third Annual Conference in Boston, Massachusetts; and

WHEREAS, the committee's report recommends (1) that the Interstate Agreement on Detainers should not be substantially amended at this time by its party states; and (2) that no suggested model legislation is necessary at this time; and

WHEREAS, the Association desires to establish a uniform understanding and application of the law and procedures of the Interstate Agreement on Detainers by all party states;

NOW, THEREFORE, BE IT RESOLVED, by the National Association of Extradition Officials at its Twenty-third Annual Conference held in Boston, Massachusetts, that the report of the committee appointed by the President to study the Interstate Agreement on Detainers be accepted; and

BE IT FURTHER RESOLVED, that the President of the Association appoint a committee to prepare a practitioner's manual on the Interstate Agreement on Detainers containing standardized forms to be used under the agreement and to be issued to Association members, and also prepare a more simplified pamphlet on the Interstate Agreement on Detainers for broader distribution to officials in the criminal justice system involved with the IAD; and

BE IT FURTHER RESOLVED, that the Executive Committee of the Association authorize a budget for the committee preparing said manual and handbook to carry out its responsibilities, said budget to be determined by the Executive Committee.

RESOLUTION #38

ENDORSING THE EFFORTS OF THE JOINT COMMISSION TO RESTRUCTURE THE INTERSTATE COMPACT GOVERNING THE CONTROL OF PAROLEES AND PROBATIONERS

Resolution adopted by the N.A.E.O.
at its Twenty-Fourth Annual Conference
Kansas City, Missouri
May 1988

WHEREAS, the National Association of Extradition Officials has demonstrated its support for the Articles of the Adult Parole and probation Compact by its endorsement of the pre-signed waiver as an alternative to extradition; and

WHEREAS, the National Association of Extradition Officials has further shown its support for this compact through a congratulatory resolution on the 50th anniversary of the compact in 1987; and

WHEREAS, the Parole and Probation Compact Administrators Association has recognized the need to examine this compact to determine areas where there are gaps in structure and services due to significant changes in the criminal justice system; and

WHEREAS, the Parole and Probation Compact Administrators Association has joined with the Association of Paroling Authorities International, the American Parole and Probation Association and the National Association of Probation Executives to form the National Commission to Restructure the Interstate Compact Governing the Control of Parolees and Probationers; and

WHEREAS, this commission, funded by the National Institute of Corrections, and now in its third year of deliberation, has used the results of national surveys to identify these policies, practices, and procedures, identify specific areas of concern and determine future directions; and

WHEREAS, this commission has focused on development of national standards, legislative needs and policies, practices and procedures in the compact aimed at improving communication between states and to facilitate the important task of community protection;

NOW, THEREFORE, BE IT RESOLVED by the National Association of Extradition Officials that this organization applauds, supports and does endorse the continued efforts of the National Commission to Restructure the Interstate Compact Governing the Control of Parolees and Probationers at this 24th Annual Conference.

RESOLUTION #39

MODIFIES RESOLUTION #3 REGARDING EXTRADITION ON BAD CHECKS

Resolution adopted by the N.A.E.O.
at its Twenty-Fourth Annual Conference
Kansas City, Missouri
May 1988

RESOLVED that the policy regarding extradition for bad check charges, adopted by resolution at the 7th Annual Conference in 1971, is modified to provide as follows:

Extradition should not issue on the charge of insufficient funds unless the check or aggregate of checks totals more than $500 or unless special circumstances exist showing that the accused is a chronic violator. The cost to the demanding state should be considered before extradition is sought.

RESOLUTION #40

ELVYN HOLT OUTSTANDING ACHIEVEMENT AWARD

Resolution adopted by the N.A.E.O.
at its Twenty-sixth Annual Conference
St. Petersburg Beach, Florida
June 1990

WHEREAS, the Board of Directors and members of the National Association of Extradition Officials wish to acknowledge with their profound appreciation the dedication and invaluable service of the hundreds of officials at the federal, state, and local level who are involved in the handling of extradition, detainer and other rendition matters; and

WHEREAS, in the quiet, routine and largely unnoticed performance of their various duties, these officials provide for the efficient processing of extraditions, promote uniformity and cooperation in interstate rendition matters and fulfill a vital role in the functioning of the criminal justice system; and

WHEREAS, the Association wishes to give special recognition at its annual conference to an official involved in handling extradition, detainer or other rendition matters who demonstrates outstanding skill, judgment, initiative, dedication and/or professionalism in the performance of his or her duties, thus making an extraordinary contribution to the interstate rendition process; and

WHEREAS, Elvyn Holt, the Archivist-Historian of the Association, for twenty-five years demonstrated such outstanding attributes and made such extraordinary contributions and for many additional years has shown her continued commitment to the field of extradition through her devoted and faithful service to the Association and its members, thus exemplifying the superior standard of performance to be met by a recipient of this special recognition award;

THEREFORE, BE IT RESOLVED, that the National Association of Extradition Officials hereby establishes the Elvyn Holt Outstanding Achievement Award for excellence in the performance of duty in interstate rendition matters; and

BE IT FURTHER RESOLVED, that this Award shall be given at each annual conference of the Association to an official, as nominated by the members and selected by the Board of Directors, who has exemplified outstanding skill, judgment, initiative dedication and/or professionalism, and thus made an extraordinary contribution to the interstate rendition process.

RESOLUTION #41

ELIMINATION OF SECOND SIGNATURE LINE ON ADOPTED DETAINER FORM

Resolution adopted by the N.A.E.O.
at its Thirtieth Annual Conference
Jackson Hole, Wyoming
June 1994

WHEREAS, it is the appropriate procedure under the Interstate Agreement on Detainers for an inmate to have legal counsel assigned at the time of inmate's court appearance;

WHEREAS, the second inmate's signature line on Detainer Form II has caused parties to be led to believe that legal counsel is assigned before the court appearance:

NOW, THEREFORE, BE IT RESOLVED by the National Association of Extradition Officials at its Thirtieth Annual Conference in Jackson Hole, Wyoming, that the Association recommends that the second inmate signature line of Form II of the Interstate Agreement on Detainers be deleted in order to eliminate any confusion that parties may have concerning the appointment of legal counsel.

RESOLUTION #42

GOVERNOR'S OFFICE INVOLVEMENT WITH INTERNATIONAL EXTRADITIONS

Resolution adopted by the N.A.E.O.
at its Thirty-first Annual Conference
Chicago, Illinois
July 1995

WHEREAS, governors' offices process all extraditions and respond to inquiries regarding extradition matters; and

WHEREAS, the United States Department of Justice, Office of International Affairs, in Washington, D.C., is responsible for all international extradition matters; and

WHEREAS, it is desirable that governors' offices be apprised of all international extradition matters originating within their state in order to (1) assist the Office of International Affairs and the requesting agency with the processing of the international extradition request, (2) be able to respond to inquiries concerning the request, and (3) determine whether any other jurisdictions within the state have charges against the fugitive which should be added as a basis for extradition;

NOW, THEREFORE, BE IT RESOLVED by the National Association of Extradition Officials at its Thirty-first Annual Conference in Chicago, Illinois, that a requesting agency should notify its governor's office of its intent to request an international extradition prior to contacting the Office of International Affairs.

RESOLUTION #43

TIME FOR ARRIVAL OF DEMANDING STATES' AGENTS

Resolution adopted by the N.A.E.O.
at its Thirty-second Annual Conference
Philadelphia, Pennsylvania
June 1996

WHEREAS, following arrest on a Governor's warrant of rendition, a fugitive remains in custody in the asylum state until agents arrive to return the fugitive to the demanding state; and,

WHEREAS, the asylum states' courts or other officials often establish the time period within which agents must arrive to receive custody of the fugitive based on the law or practice of the asylum state to allow a "reasonable time" for the arrival of the agents; and,

WHEREAS, the Federal Extradition Act (18 U.S.C. s. 3182) clearly implies that the fugitive is to remain in custody in the asylum state for at least thirty (30) days to await the arrival of agents from the demanding state; and,

WHEREAS, it has been found that a period of less than thirty (30) days within which to require the arrival of agents to take custody of the fugitive is unreasonable.

NOW, THEREFORE, BE IT RESOLVED by the National Association of Extradition Officials at its 32nd Annual Conference in Philadelphia, Pennsylvania, that the Association recommends and strongly urges appropriate authorities in asylum states to allow no less than thirty (30) days from the service of the Governor's warrant of rendition for the arrival of agents from the demanding state to take custody of the fugitive.

RESOLUTION #44

UNIFORM INTERSTATE AGREEMENT ON DETAINERS FORMS

Resolution adopted by the N.A.E.O.
at its Forty-fourth Annual Conference
Scottsdale, Arizona
June, 2008

WHEREAS, it is the expressed purpose of the National Association of Extradition Officials that uniform extradition procedures be employed by jurisdictions within the United States;

WHEREAS, the Interstate Agreement on Detainers provides for the temporary transfer of prisoners, who are wanted by other jurisdictions for trial on criminal charges;

WHEREAS, with the requested input of Interstate Agreement on Detainers Agreement Administrators of all the states signatory to the Interstate Agreement on Detainers, the National Association of Extradition Officials created a set of standardized forms (I-IX) establishing an orderly and effective procedure by which to properly execute the temporary transfer of prisoners under the Interstate Agreement on Detainers;

WHEREAS, some agencies within states signatory to the Interstate Agreement on Detainers modify or fail to use the standardized forms, causing inconsistencies and disruption in the temporary transfer of prisoners under the Interstate Agreement on Detainers;

THEREFORE, BE IT RESOLVED, that the uniform use of the National Association of Extradition Officials' standardized forms relating to the Interstate Agreement on Detainers is of critical importance; and

NOW, THEREFORE, BE IT RESOLVED by the National Association of Extradition Officials at its 44th Annual Conference in Scottsdale, Arizona recommends and strongly urges that all participating jurisdictions uniformly use the National Association of Extradition Officials' standardized forms relating to the Interstate Agreement on Detainers.