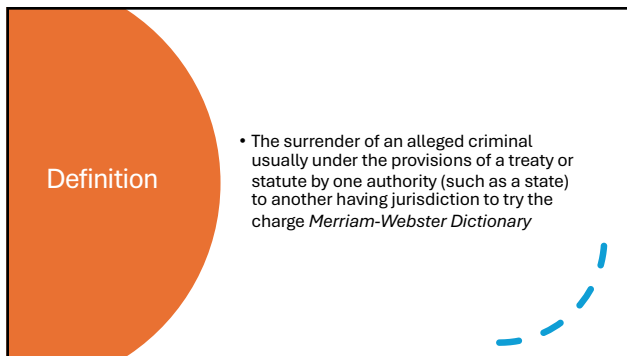




1



2



3

International
Extradition

"International extradition is the formal process by which a person found in one country is surrendered to another country for trial of punishment. The process is regulated by treaty and conducted between the Federal Government of the United States and government of a foreign country. – *United States Attorneys' Manual* section 9-15.000

Lots of procedural hoops to jump through and everything depends on the list of extraditable offenses identified in the treaty but more recent ones simply make all felonies extraditable

Info obtained from J. Welty's blog post "Basics of International Extradition," July 5, 2011.

4

Primary Sources of Extradition Law

Extradition Clause of the US Constitution (Article IV, section 2, clause 2)

The Federal Extradition Act of 1793 (18 USC secs. 3181-3195)

Uniform Criminal Extradition Act of 1936

- UCEA
- NC General Statute 15A-721 – 750
- Louisiana, South Carolina, and North Dakota do not appear to have adopted the UCEA

5

FEDERAL ACT VS. UCEA

- Federal Act
 - Charged with treason, felony, or other crime
 - Fugitives only
 - No process established for Arrest and Rendition
- UCEA
 - Felony/Misdemeanor, absconded, escaped and juveniles
 - Fugitives and Nonfugitives
 - Procedure for Arrest and Rendition, e.g., Fugitive arrest, arraignment, identification hearing, and writ of habeas corpus

6

EXTRADITION
CLAUSE

ARTICLE IV, SECTION 2, CLAUSE 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 the demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction.

7

“Shall Flee...”

Anyone who commits a crime in one State and is subsequently found in any other State is a fugitive from justice. See Andersweit v. Massachusetts, 203 F.3d 992 (10th Cir. 2000).

Reason for departure is irrelevant. See New Mexico ex. Rel. Ortiz v. Ross, 524 U.S. 151 (1998).

Person who leaves involuntarily is still a fugitive. See Clark v. Comm’t of Corr., 263 Conn. 389 (2002).

8

“Shall...”

- Asylum state has no discretionary power concerning the extradition of fugitive (discretionary with nonfugitive however)
- Extradition is part of the arrest process
- Determination of guilt not an issue
- Alleged violation of Constitutional rights if extradited is not an issue

9

Nonfugitive Extraditions

Subject committed an act in one State that resulted in being charged with a crime in demanding state.

Modern technology helps facilitate the commission of crimes across state lines

Application should **NOT** have reference to fugitivity

Governor has discretion to surrender subject

• See NOGS 15A-726, "The Governor of this State may also surrender..."
• Applies even if the accused was not in that state at th time of the commission of the crime, and has not fled therefrom.

10

Examples of Nonfugitive Extraditions

Nonsupport

Transfer of Funds or Drugs

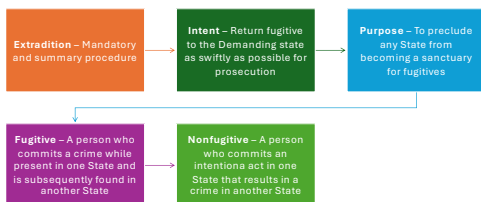
Identity Theft

Internet Threats

"Sexting" with Minors

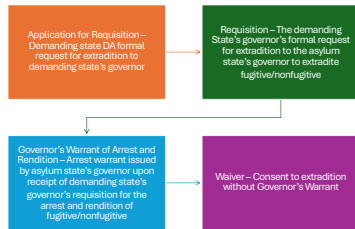
11

Basic Principles of Extradition



12

Basic Terms of Extradition



13

THE EXTRADITION PROCESS

- THREE PARTS
 - ASYLUM STATE'S PRE-GOVERNOR'S WARRANT PROCESS
 - DEMANDING STATE'S FORMAL DEMAND FOR EXTRADITION PROCESS
 - ASYLUM STATE'S ISSUANCE OF GOVERNOR'S WARRANT PROCESS

14

THE BEGINNING

1. Person
 1. Commits a crime in the Demanding State
 2. Parolee/Probationer/Post-Release Absconder
 3. Prisoner Escapace
 4. Defendant fails to appear at sentencing
2. Arrest Warrant is issued in the Demanding State and entered in NCI
3. Subject Subsequently Found in Asylum State

15

INITIAL DECISION BY ASYLUM STATE

When a fugitive is found, Asylum State authorities may:

- Arrest fugitive without a warrant
- Arrest fugitive with a warrant
- Conduct surveillance and arrest fugitive upon issuance of a Governor's warrant
- Do nothing at all because Demanding State will not extradite

16

ARREST WITHOUT WARRANT

- Reasonable Information
 - Fugitive is charged with crime punishable by death or imprisonment for a term exceeding one year (felony)
- Demanding state's arrest warrant sufficient reasonable information (not warrant of arrest in Asylum state)
- Once arrested, fugitive must be taken before a judge/magistrate with all practicable speed (see NCGS 15A-734); 48 hours seems to be the "golden rule" but does that happen?
- Fugitive complaint must then be filed under oath setting for the ground(s) for arrest

17

ARREST WITH FUGITIVE WARRANT

- Upon filing a fugitive complaint, Asylum state court **shall** issue fugitive arrest warrant
- Asylum state should contact Demanding state before filing to determine if Demanding state will extradite
- Waiver of Extradition
 - Upon arrest, Court should ask fugitive if willing to waive extradition
 - Send a certified copy to the Extradition Secretary – Governor's Copy

18

PRE-SIGNED WAIVER

NCGS 15A-1343(17) states that, as a regular condition of probation, a probationer will agree, to "Waive all rights relating to extradition proceedings if taken into custody outside of this State for failing to comply with the conditions imposed by the court upon a **FELONY** conviction". See NC Department of Adult Corrections, Community Supervision Form DCC-2.

The NC DOJ and Office of the Governor take the stance that pre-signed waivers should be accepted

If there is a pre-signed waiver, a fugitive should be brought before a magistrate, told of the pre-signed waiver and held without a bond.

Notify demanding state for pickup.

19

FUGITIVE COMPLAINT

- Must state person is fugitive or nonfugitive
- Person has committed a crime, absconded, escaped, or failed to appear in demanding state.
- Must be sworn before a magistrate or supported by affidavit from demanding state.
- If available, certified copies of charging document and arrest warrant from demanding state should be attached.

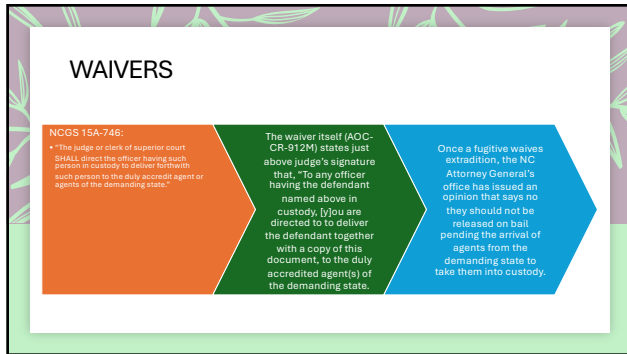
20

ARRAIGNMENT

Fugitive must be arraigned on fugitive complaint with "all practicable speed." *NCGS 15A-734*

- Reason for Arrest – criminal matter pending in demanding state
- Statutory Right to Counsel
- Right to have Governor's Warrant issued
- Right to Waive Issuance of Governor's Warrant
 - Fugitive **should** be asked if they are willing to waive extradition

21



22

REFUSAL OF EXTRADITION

- Does not appear to be an AOC form for refusal. Each jurisdiction uses their own "Refusal of Extradition" which is signed by the person and then signed by the judge with a new court date for each 30 days until Order Dismissing the Extradition Charge
- Procedure is to notify the demanding state the **FIRST** time they appear in Court and refuse. This is to make sure the demanding state gets the maximum amount of time available to determine whether or not to get a Governor's Warrant.

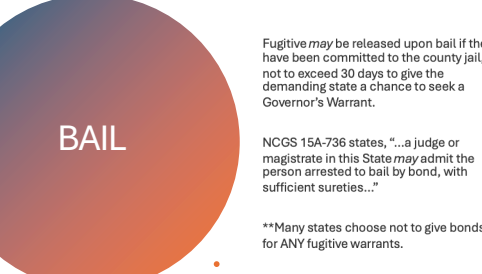
23

Commitment Order NCGS 15A-735 and 737

Asylum state court typically orders:

- Fugitive placed in custody for 30 days for issuance of Governor's Warrant
- Additional 60 days if needed
- End of 90 days, Asylum court may dismiss the matter unless Governor's Warrant has been issued

24




BAIL

Fugitive *may* be released upon bail if they have been committed to the county jail, not to exceed 30 days to give the demanding state a chance to seek a Governor's Warrant.

NCGS 15A-736 states, "...a judge or magistrate in this State *may* admit the person arrested to bail by bond, with sufficient sureties..."

****Many states choose not to give bonds for ANY fugitive warrants.**

25

[illegible]

BAIL

Fugitive may be released upon bail UNLESS:

- Charged with a crime punishable by death or life imprisonment
- Pre-signed waiver
- Fugitive has waived extradition
- Many states, if they allow bonds, will not allow bonds for escapees and/or absconders of probation, parole, PRS
- Served with Governor's Warrant
- Once waiver is signed or habeas corpus denied, person belongs to the demanding state and must be held for transport.

****YOUR JURISDICTIONS?****

26

[illegible]

ISSUANCE OF GOVERNOR'S WARRANT

- If a demanding state's requisition, application, and supporting documents are in order:
- Asylum state's Governor issues Governor's Warrant
- Sent to local law enforcement
- Local charges pending – Governor's Warrant may be held in abeyance (NCGS 15A-739)
- **YOUR JURISDICTIONS?*

27

[illegible]

Fugitive Sentenced for NC Charges

If they receive an active DPS sentence for local charges:

- A certified copy of any waiver goes with them to DPS (DPS will honor the waiver for 5 years)
- Local court notifies NC Extradition Secretary of DPS sentence
- Local court sends entire Governor's Warrant packet back to the Extradition Secretary
- In the event the subject did not waive extradition, the Governor's Warrant will be served up them upon completion of DPS sentence

28

GOVERNOR'S WARRANT

A fugitive warrant must be dismissed after 90 days

a. NCGS 15A-735 and 737

b. The dismissal of the first fugitive warrant is not a bar to a second fugitive warrant.

↓

A Governor's Warrant is an arrest warrant. If a fugitive warrant has been dismissed, the Governor's Warrant can and should be used to arrest the fugitive again.

↓

The dismissal of a fugitive warrant has no bearing upon a Governor's Warrant.

29

Arraignment on Governor's Warrant

Upon service and arrest:
 Fugitive must be arraigned forthwith.
 Fugitive must be advised

1. Demand has been made for extradition
2. Statutory right to counsel
3. Right to challenge warrant – Writ of Habeas Corpus

Failure to bring them before a judge is a Class 2 misdemeanor.
 Competence to assist counsel in extradition proceedings may be raised.

30

WRIT OF
HABEAS
CORPUS
NCGS 15A-730

Fugitive may only challenge
legality of Governor's Warrant
of four issues:

- Extradition documents not legally sufficient.
- Identity – Not the person wanted in demanding state.
- Not substantially charged with a crime in the demanding state.
- Not a "fugitive"

31

Habeas Corpus Process

Heard in Superior Court

A judge should give a reasonable period within which to file (10 days). **Your jurisdiction?*

Governor's Warrant prima facie evidence all requirements for extradition have been met.

Once prima facie showing has been made, fugitive has burden of clear and convincing evidence.

Strict rules of evidence inapplicable.

Affidavits, documentation, photographs, fingerprints.

If denied, fugitive may appeal BUT denial is considered a final order. Unless a stay is issued by the NC Criminal Appeals, they can be extradited even if appealed.

32

EXTRADITION ORDER

Upon arraignment and/or denial of writ of habeas corpus:
Asylum state court orders fugitive extradited
Sets date for pickup

1. 18 USC 3182 "may be discharged after 30 days"
2. Fugitive must file writ of habeas corpus requesting release

Demanding state is notified fugitive is available for pickup
Fugitive is returned to demanding state for prosecution

33

+
•
○

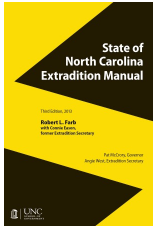
JUVENILES

Interstate Compact for Juveniles

- All 50 states, Washington, DC, and the Virgin Islands
- No specific statutes in the current compact set out the particular procedures for handling interstate issues involving delinquent juveniles
- Guidance is provided by the Interstate Commission for Juveniles which is a contract between the states that regulates the interstate movement of juveniles who are under court supervision or who have run away from home and left their state of residence. Compact provisions take precedence over conflicting state laws.

34

Additional Resources



35

?

QUESTIONS?

Jay Hollingsworth
Assistant Public Defender
252-331-4650
joseph.r.hollingsworth@nccourts.org

?

36
