

**EXTRADITION AND THE INTERSTATE COMPACT FOR
ADULT OFFENDER SUPERVISION**

Advanced Criminal Procedure for Magistrates



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Part 1: EXTRADITION

Extradition is the procedure to return a fugitive to the state where he or she committed a crime, escaped from incarceration, or violated probation and parole.

Scenario 1: *A person commits a crime in North Carolina and flees to another state.*

When a person commits a crime in North Carolina and flees to another state, you prepare a charging document just as you would in any regular North Carolina case. If you issued a charging document prior to the defendant's flight from North Carolina, an officer might ask you to issue a new warrant after the defendant flees. Why?

You might also be asked to sign Form GOV-1, certifying the warrant and affidavit, as part of the requisition packet North Carolina will send to the other state.

Scenario 2: *A fugitive from another state is found in North Carolina*

If the officer comes to you *before* arresting the fugitive:

- Place the officer under oath.
- Ask the officer his or her reasons for seeking a Warrant for Arrest for Fugitive (AOC-CR-910M).
There are three grounds that justify issuance of a fugitive arrest warrant:
 1. A person was charged with a crime in another state and fled to NC;
 2. A person was convicted in another state and escaped to NC; or
 3. A person violated conditions of probation or parole by coming to NC.
- Determine whether there is reliable information that one of the three grounds exists. You do NOT determine whether there is probable cause to believe the person committed the crime in the other state. What constitutes "reliable information"?

- If the officer's information comes from a PIN message, encourage the officer to call the issuing state to verify that the charge is still outstanding and that the state will request extradition.
- Complete the Fugitive Affidavit (AOC-CR-911M) and the Warrant for Arrest for Fugitive (AOC-CR-910M). Attach copies of the document or information used to establish the person's fugitive status and remind the officer to bring a copy of the out-of-state charging document to the clerk as soon as possible to attach it to the original copy of the fugitive warrant in the clerk's office.
- When the fugitive is brought before you, follow the appearance procedure below.

If the officer comes to you *after* arresting the fugitive without a warrant:

- Determine whether the person has been charged with (or is on probation or parole for) a crime in another state that is punishable there by death or imprisonment for more than one year. (If not, the officer was without authority to arrest the fugitive without a warrant.) This determination must be based on reliable information. You do NOT determine whether there was probable cause for the underlying charge.
- Complete a Fugitive Affidavit (AOC-CR-911M) and the Magistrate's Order for Fugitive (AOC-CR-909M). Attach copies of the document or information used to establish the person's fugitive status and remind the officer to bring a copy of the out-of-state charging document to the clerk as soon as possible so they may be attached to the original copy of the magistrate's order in the clerk's office.
- Follow the appearance procedure below.

Appearance procedure when the fugitive is brought before you:

- Inform the fugitive of the charges.
- Inform the fugitive of his or her right to communicate with counsel and friends.
- Inform the fugitive that he or she is entitled to a hearing before the Governor of North Carolina grants the other state's extradition request. A magistrate CANNOT accept a waiver of extradition.
- If applicable, set release conditions. Under G.S. 15A-736, bail is improper when the out-of-state offense is punishable in that state by death or life imprisonment. That same statute says bail is only proper "by bond, with sufficient sureties." Your local bond schedule may include instructions on what bond to set for fugitives.
- Order the earliest possible appearance before a district court judge.
- If bail is not allowed or the fugitive cannot meet bail, commit the fugitive to the county jail.

Scenario 3: *A fugitive is arrested on a North Carolina governor's warrant*

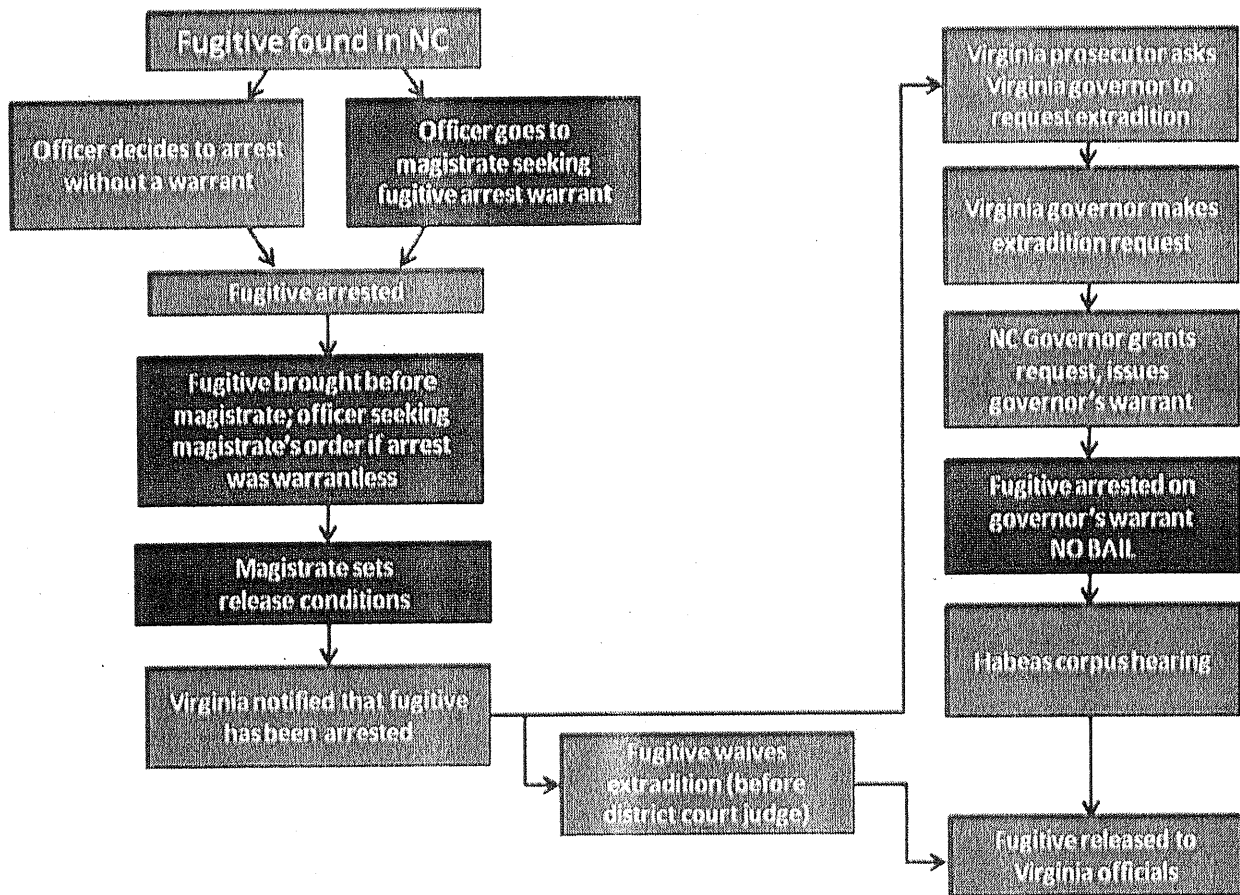
Once arrested, many fugitives waive formal extradition procedures, knowing there are only limited circumstances in which extradition may be challenged. That waiver must be before a judge or clerk of superior court. If the fugitive does not waive extradition, the state from which the fugitive fled must formally ask (through a "requisition") the governor of North Carolina to extradite. The governor of North Carolina will, in turn, issue a governor's warrant. The governor's warrant gives North Carolina officials the authority to take the fugitive into custody to await pick-up by officials from the other state. (In fact, the person may already be in custody if he or she was not allowed bail or was unable to make bail following his or her initial arrest in North Carolina.)

When a defendant is brought before you on a governor's warrant:

- Tell the fugitive that the governor of North Carolina has issued a warrant for him or her to be taken into custody and returned to the state from which he or she fled.
- Inform the fugitive of his or her right to communicate with counsel and friends.
- Commit the fugitive to the jail. Bond is not authorized after arrest on a governor's warrant.
- Order the earliest possible appearance before a district court judge (where the fugitive will be informed of the right to apply for a writ of habeas corpus).

When a person commits a crime in another state and is arrested in North Carolina before being charged in the other state:

Occasionally, a person commits a crime in another state (usually a neighboring state, probably late at night) and flees to North Carolina before the other state has an opportunity to charge the person. An uncharged fugitive can be arrested in North Carolina, *but only with an arrest warrant*. In these cases, the magistrate *does* determine independently determine that there is probable cause to believe the person committed a crime in the other state. Use a standard North Carolina arrest warrant (not a fugitive arrest warrant) in this situation, modified to indicate that the crime is one committed against the law of another state. You do not need to spell out the elements of the out-of-state offense; just use the name of the crime given by officers from the other state (even if it's different from the name used in North Carolina). When the fugitive is eventually brought before you, use the regular fugitive appearance procedure above. When the offender is eventually charged in the other state, officers here should attach the other state's charging document to the North Carolina arrest warrant on file with the clerk.



Part 2: THE INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

Not all probationers or parolees under supervision for out-of-state convictions who are found in North Carolina are fugitives. Some have their supervision formally transferred to North Carolina under the Interstate Compact for Adult Offender Supervision (ICAOS). In exchange for having their supervision transferred, Interstate Compact offenders agree to abide by the conditions of the "Sending State," (the state of conviction), the "Receiving State," (North Carolina), and the ICAOS Rules. Offenders also waive extradition as a condition of transfer under the Compact.

Though Compact offenders are supervised by North Carolina probation officers, they remain under the jurisdiction of the Sending State. Thus, even when a Compact offender violates probation here, the warrant for his or her arrest on the violation will actually come from the Sending State. Out-of-state warrants for Compact offenders should be processed through North Carolina's Compact Administrator in Raleigh; if that happens, the warrant will be accompanied by an "Authority to Detain and Hold" form, clearly noting that the offender is subject to the Compact. Sometimes, however, a Sending State will fail to go through North Carolina's Compact Administrator and will instead send its warrant directly to local officials here. When that happens, it may be difficult for the magistrate to distinguish between an out-of-state warrant for a *Compact probationer* and a *fugitive probationer* (who violated probation and fled to North Carolina).

For fugitive probationers, follow the procedures described above for fugitives arrested in North Carolina.

For Interstate Compact offenders use the following procedure:

- Inform the offender of the alleged violation.
- Inform the offender of his or her right to communicate with counsel and friends.
- Commit the fugitive to the jail. Bond is not authorized for Compact offenders. You can use AOC-CR-200, but check "Your release is not authorized" and write "Interstate Compact offender" in the Additional Information block.
- Order the earliest possible appearance before a district court judge (where the offender can be appointed counsel if indigent and certain conditions apply).
- Contact the North Carolina Compact Administrator (Anne Precythe) at 919-716-3160 to inform the Administrator that a Compact offender has been taken into custody. The Administrator will schedule a probable cause hearing before a DCC hearing officer within 15 days. If the hearing officer finds probable cause that a violation occurred, the North Carolina Administrator will notify the Sending State, which will then decide whether to retake the offender.

How to identify Compact offenders:

- If properly coordinated, an out-of-state warrant for a Compact offender will be accompanied by an "Authority to Detain and Hold" form, signed by North Carolina's Compact Administrator.
- Contact the local Probation office or call the Compact Administrator in Raleigh.
- Go to <http://www.doc.state.nc.us/offenders>, click on "Offender Information - Public Search," and enter the offender's name. Compact offenders are identified as such in the "Offender Information" block.