

Extradition

Note: The *State of North Carolina Extradition Manual* is available from the Institute of Government's publications office (919-966-4119 or -4120). It also is reproduced in full in the volume of the General Statutes of North Carolina entitled *Annotated Rules of North Carolina*, which is published by LEXIS Law Publishing. This outline does not repeat the information set out in the manual. Instead, it provides telephone numbers to contact people for assistance, cites pertinent AOC forms, and updates the manual's discussion of legal issues concerning extradition.

I. Extradition of Fugitive from North Carolina Found in Another State

See the discussion in the manual, noted above. For additional information on this subject, call 252-451-5595 to speak with the Governor's Extradition Secretary.

AOC Forms: GOV. 1 through GOV. 2-F.

II. Extradition by Another State of Fugitive Found in North Carolina

See the discussion in the manual, noted above. For additional information on this subject, call 252-451-5595 to speak with the Governor's Extradition Secretary.

AOC Forms: AOC-CR-909M (Magistrate's Order for Fugitive); AOC-CR-910M (Warrant for Arrest for Fugitive); AOC-CR-911M (Fugitive Affidavit); AOC-CR-912M (Waiver of Extradition Findings and Order by Judge).

III. Interstate Agreement on Detainers; G.S. 15A-761

See the discussion in the manual, noted above. For additional information on this subject, call 919-716-3190.

IV. Return of Juvenile from Another State; G.S. 7B-2800 through 7B-2827 (Interstate Compact on Juveniles)

See the discussion in the manual, noted above. For additional information on this subject, call 919-733-9464.

V. Legal Issues in Extradition

1. Is a fugitive entitled to a hearing before a Governor's Warrant can be issued?

The general rule is that the fugitive is not entitled to a hearing. *Application of Dugger*, 17 Ariz. App. 297, 497 P.2d 413 (1972); *Horne v. Wilson*, 306 F. Supp. 753 (E.D. Tenn. 1969); *Scheinfain v. Aldredge*, 191 Ga. 479, 12 S.E.2d 868 (1941).

2. What issues may the Governor consider in deciding whether extradition is proper in a given case?

The United States Supreme Court has ruled that a Governor has a mandatory duty to comply with a proper demand for a fugitive, and a federal court has the authority to compel the Governor to perform this duty. *Puerto Rico v. Branstad*, 483 U.S. 219, 107 S. Ct. 2802, 97 L. Ed. 2d 187 (1987). A Governor may only consider the following issues when deciding whether extradition is proper: (1) whether the extradition documents on their face are in order; (2) whether the accused has been charged with a crime in the demanding state; (3) whether the accused is the person named in the request for extradition; and (4) whether the accused is a fugitive. *Michigan v. Doran*, 439 U.S. 282, 99 S. Ct. 530, 58 L. Ed. 2d 521 (1978); *California v. Superior Court of California*, 482 U.S. 400, 107 S. Ct. 2400, 96 L. Ed. 2d 332 (1987); *New Mexico v. Reed*, 524 U.S. 151, 118 S. Ct. 1860, 141 L. Ed. 2d 131 (1998) (allegation that extraditing state will deny fugitive due process and fugitive would be physically harmed in prison are not issues that may be raised in extradition hearing); *State v. Alabama v. Engler*, 85 F.3d 1205 (6th Cir. 1996).

3. What is the meaning of “fugitive from justice”?

The term “fugitive from justice” is broadly defined as a person who commits a crime in a state and then leaves its jurisdiction. It is unnecessary to show that the person was charged before leaving the state or that the person fled to avoid prosecution. A person is a fugitive even if he or she left the state with the state’s consent. See 31A Am. Jur. 2d, *Extradition* § 23 (1989); *In re Sultan*, 115 N.C. 57, 20 S.E. 375 (1894); *Gee v. State of Kansas*, 912 F.2d 414 (10th Cir. 1990) (even if fugitive leaves state with knowledge and consent of state officials, his or her fugitive status is unaffected); *Dunn v. Hindman*, 836 F.Supp. 750 (D.Kan. 1993).

4. Is a fugitive entitled to be released on bail before the Governor’s Warrant is issued?

G.S. 15A-736 states that a magistrate or judge “may admit the person arrested to bail by bond” unless the person is charged with a crime punishable by death or life imprisonment under the laws of the state in which it was committed. The statute mentions release only by bail with sufficient sureties.

5. Must a fugitive be released if the Governor’s Warrant has not been issued when the fugitive has been committed for the maximum time—90 days—permitted under G.S. 15A-735 (up to 30 days) and G.S. 15A-737 (extension permitted up to 60 days)?

Yes. *Brightman v. Withrow*, 172 W. Va. 235, 304 S.E.2d 688 (1983) (but fugitive remains subject to rearrest under Governor’s Warrant); *Speaks v. McGregor*, 355 F. Supp. 1129 (W.D. Va. 1973); *People ex rel. Linaris v. Weizenecker*, 392 N.Y.S.2d 813, 89 Misc.2d 814 (Putnam Co. Ct. 1977).

6. May a fugitive be rearrested with a Governor’s Warrant after a fugitive warrant has been dismissed?

Yes. *Debski v. New Hampshire*, 115 N.H. 673, 348 A.2d 343 (1975); *Brightman v. Withrow*, 172 W. Va. 235, 304 S.E.2d 688 (1983); *Commonwealth ex rel. Douglass v. Aytch*, 225 Pa. Super 195, 310 A.2d 313 (1973).

7. Does a person held for extradition have a right to be released on bail after a Governor's Warrant has been issued?

The majority rule is that the Uniform Extradition Law does *not* grant a right to bail to a person held for extradition after a Governor's Warrant is issued. See, for example, *Emig v. Hayward*, 703 P.2d 1043 (Utah 1985); *In re Iverson*, 135 Vt. 255, 376 A.2d 23 (1977); *In re Ford*, 187 Mich. App. 452, 468 N.W.2d 260 (1991); *Balasco v. State*, 52 Ala.App. 99, 289 So.2d 666 (1974); *State ex rel. Howard v. St. Joseph Superior Court*, 262 Ind. 367, 316 N.E.2d 356 (1974). Most courts have also held that judges have no common law or inherent power to grant release on bail in such circumstances (see the cases cited above). But see *Carino v. Watson*, 171 Conn. 366, 370 A.2d 950 (1976) (releasing fugitive on bail was proper, even after Governor's Warrant had been served on the fugitive; the opinion was based on the court's common law power to allow bail "in all cases"); *In re Basto*, 68 N. J. 480, 531 A.2d 355 (1987) (allowing bail for fugitive who was not in demanding state when crime committed).

The Office of the Governor of North Carolina agrees with the National Association of Extradition Officials' resolution (1986) opposing bail in all cases when a Governor's Warrant has been issued. It takes the position that the Governor's Warrant is an executive—not judicial—warrant, and bail is not allowed.

8. Is a fugitive entitled to counsel at a habeas corpus hearing to contest the legality of an extradition proceeding?

Yes. Under G.S. 15A-730, an accused is entitled to have counsel present at such hearings. G.S. 7A-451(a)(5) provides appointed counsel for an indigent at an extradition hearing. Appointed counsel is not required at an initial arraignment on a fugitive warrant or at a hearing before the Governor. *Rutledge v. Preadmore*, 21 Mich. App. 726, 176 N.W.2d 417 (1970).

Most courts have ruled that counsel in such cases is required solely by statute and is not constitutionally required under the Sixth Amendment. *McGuigan v. Sheriff, Wahoe County*, 669 F. Supp. 1037 (D. Nev. 1987); *Wertheimer v. State*, 294 Minn. 293, 201 N.W.2d 383 (1972); *Roberts v. Hocker*, 85 Nev. 390, 456 P.2d 425 (1969).

9. On what grounds may a fugitive attack a Governor's Warrant in a habeas corpus proceeding?

The United States Supreme Court has ruled that a court may only consider the following issues when deciding whether extradition is proper: (1) whether the extradition documents on their face are in order; (2) whether the accused has been charged with a crime in the demanding state; (3) whether the accused is the person named in the request for extradition; and (4) whether the accused is a fugitive. *California v. Superior Court of California*, 482 U.S. 400, 107 S. Ct. 2400, 96 L. Ed. 2d 332 (1987). See also *Michigan v. Doran*, 439 U.S. 282, 99 S. Ct. 530, 58 L. Ed. 2d 521 (1978); *New Mexico v. Reed*, 524 U.S. 151, 118 S. Ct. 1860, 141 L. Ed. 2d 131 (1998) (allegation that extraditing state will deny fugitive due process and fugitive would be physically harmed in prison are not issues that may be raised in extradition hearing); *Dodd v. State*, 56 N.C. App. 214, 287 S.E.2d 435 (1982); *In re Armstrong*, 49 N.C. App. 175, 270 S.E.2d 619 (1980). The defendant's evidence must be conclusive; mere conflicting testimony as to an accused's

absence from the demanding state at the time of the alleged crime will not support his or her release from custody at a habeas corpus proceeding. *People ex rel. Garner v. Clutts*, 20 Ill.2d 447, 170 N.E.2d 538 (1970); *State ex rel. Zack v. Kriss*, 195 Md. 559, 74 A.2d 25 (1952). See also discussion in 11. below.

10. Must an indictment, information, or warrant from the demanding state be accompanied by affidavits or other documents showing the basis for the probable cause to arrest the fugitive?

An indictment is a sufficient finding of probable cause so that an asylum state may not look behind the document to determine whether probable cause exists. *U.S. ex rel. Davis v. Behagen*, 436 F.2d 596 (2d Cir. 1970); *People v. Jackson*, 180 Colo. 135, 502 P.2d 1106 (1972).

If the documents sent by the demanding state do not include an indictment, they must show that a detached and neutral judicial official in the demanding state has found probable cause. It is not required that an affidavit supporting probable cause must have been executed before the issuance of an arrest warrant. *Dunn v. Hindman*, 836 F.Supp. 750 (D.Kan. 1993).

If the Governor in the asylum state decides to issue a Governor's Warrant, the courts of that state may not review the documents to see whether they contain a showing of probable cause. *Michigan v. Doran*, 439 U.S. 282, 99 S. Ct. 530, 58 L.Ed.2d 521 (1978); *California v. Superior Court of California*, 482 U.S. 400, 107 S. Ct. 2400, 96 L. Ed. 2d 332 (1987).

11. What is the standard of proof required for a fugitive who is attacking a Governor's Warrant in a habeas corpus proceeding? Does the state have the burden of producing evidence if a defendant introduces evidence contesting his or her status as a fugitive?

A Governor's Warrant creates a presumption of regularity in an extradition proceeding, and a fugitive who wishes to attack the warrant must show by clear and convincing evidence that the warrant is invalid. *People ex rel. Harris v. Warden*, 42 App. Div. 2d 549, 345 N.Y.S.2d 29 (Sup. Ct. 1973); *Stolz v. Miller*, 190 Colo. 43, 543 P.2d 513 (1975); *McCullough v. Darr*, 219 Kan. 477, 548 P.2d 1245 (1976). Other cases have formulated the standard of proof as requiring "conclusive" evidence, *People ex rel. Pirone v. Police Comm'r*, 15 App. Div. 2d 809, 225 N.Y.S.2d 257 (Sup. Ct. 1962); or as requiring "clear and satisfactory" evidence, *State ex rel. Rhodes v. Omodt*, 300 Minn. 129, 218 N.W.2d 461 (1974). In *Dodd v. State*, 56 N.C. App. 214, 287 S.E.2d 435 (1982), the North Carolina Court of Appeals ruled that a fugitive must prove beyond a reasonable doubt that he or she is not the person named in the extradition papers.

States differ on whether the prosecution must present evidence to rebut an alleged fugitive's evidence. In *Rhodes*, the court ruled that the state must present "minimal" evidence rebutting an alleged fugitive's evidence that he or she was not in the demanding state at the time of the crime. In *Stolz*, the court ruled that a statement by an alleged fugitive does not necessarily rebut the presumption of regularity created by the Governor's Warrant.

12. Does res judicata bar the state from proving in a second extradition hearing that the defendant was in the demanding state when the offense was committed, if the state did not present sufficient evidence to prove that issue at the first extradition hearing?

Res judicata is not a bar to a second extradition hearing if new or additional evidence is presented at the second hearing. *State ex rel. Moore v. Conrad*, 179 W.Va. 577, 371 S.E.2d 74 (1988); *In re Russell*, 115 Cal.Rptr. 511, 524 P.2d 1295 (1974). But see *Wells v. Sheriff, Carter County*, 442 P.2d 535 (Okla.Crim.App. 1968).

13. May a second Governor's Warrant be issued after the first Governor's Warrant was dismissed because of technical errors?

Yes. *Cain v. Moore*, 182 Conn. 470, 438 A.2d 723 (1980).

14. Are waivers of extradition by probationers and parolees that are executed as a condition of probation and parole valid when a state later seeks to rely on the waivers in extraditing them?

Yes. *Pierson v. Grant*, 527 F.2d 161 (8th Cir. 1975); *Commonwealth v. Green*, 525 Pa. 424, 581 A.2d 544 (1990) (citing cases from other jurisdictions); *State v. Lingle*, 209 Neb. 492, 308 N.W.2d 531 (1981). These waivers are commonly known as pre-signed waivers of extradition.

15. Is district court a court of record?

Yes. *Bain v. Hunt*, 10 N.C. 572 (1825). Thus, a district court judge may accept a waiver of extradition under G.S. 15A-746.

16. General Research References

31A Am. Jur. 2d *Extradition* (1989).

35 C.J.S. *Extradition* (1999).

Donald M Zupanec, *Validity, Construction, and Application of Interstate Agreement on Detainers*, 98 A.L.R.3d 160 (1980 and Supplement).

Thomas R. Trenkner, *Necessity That Demanding State Show Probable Cause to Arrest Fugitive in Extradition Proceedings*, 90 A.L.R.3d 1085 (1979 and Supplement).

Anita R. Shapiro, *Discharge on Habeas Corpus of One Held in Extradition Proceedings As Precluding Subsequent Extradition Proceedings*, 33 A.L.R.3d 1443 (1970 and Supplement).

W. C. Crais III, *Necessity and Sufficiency of Identification of Accused As the Person Charged, to Warrant Extradition*, 93 A.L.R.2d 912 (1964 and Later Case Service).

W. R. Habeeb, *Court's Power and Duty, Pending Determination of Habeas Corpus Proceeding on Merits, to Admit Petitioner to Bail*, 56 A.L.R.2d 668, § 5 (1957 and Later Case Service).

L. I. Reiser, *Determination, in Extradition Proceedings, or on Habeas Corpus in Such Proceedings, Whether a Crime Is Charged*, 40 A.L.R.2d 1151 (1955 and Later Case Service).

Phillip E. Hassman, *Extradition of Juveniles*, 73 A.L.R.3d 700 (1976 and Supplement).

Carol Crocca, *Right of Extraditee to Bail After Issuance of Governor's Warrant and Pending Final Disposition of Habeas Corpus Claim*, 13 A.L.R.5th 118 (1993 and Supplement).