



# EXTRADITION & RENDITION: TERMS & PROCESS

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## PRIMARY SOURCES OF EXTRADITION LAW

- Extradition Clause of the U.S. Constitution
  - Art. IV, § 2, cl. 2
- The Federal Extradition Act of 1793
  - 18 U.S.C. §§ 3181-3195
- Uniform Criminal Extradition Act of 1936
  - UCEA
  - N.C. Gen. Stat. §§ 15A-721 thru 750
  - Two states have not adopted the UCEA but have similar laws – South Carolina and Mississippi

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## FEDERAL ACT VS. UCEA

Federal Act	UCEA
<ul style="list-style-type: none"> <li>* Charged with treason, felony or other crime</li> <li>* Fugitives only</li> <li>* No process established for the Arrest and Rendition</li> </ul>	<ul style="list-style-type: none"> <li>* Felony/Misdemeanor, Absconded, Escaped, &amp; Juveniles</li> <li>* Fugitives and Nonfugitives</li> <li>* Procedure for Arrest &amp; Rendition, e.g., Fugitive Arrest, Arraignment, Identification Hearing, Writ of Habeas Corpus</li> </ul>

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## EXTRADITION CLAUSE ART. IV, § 2, CL.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.

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### "A PERSON CHARGED"

- Federal Act:
  - Treason, felony or misdemeanor
- Under UCEA:
  - Felony/Misdemeanor (Crime)
  - Escapee
  - Someone who Absconds from Parole, Probation, or Post-Release Supervision
  - Unsatisfied Judgment/Sentence
  - Juveniles
  - **Nonfugitives**

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### "ANY STATE"/ "ANOTHER STATE"

- All States and Territories of the United States
  - See *Puerto Rico v. Brandstad*, 483 U.S. 219 (1987)
- Inapplicable to the Federal Government
  - District Columbia has not adopted UCEA
- Inapplicable to foreign countries

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### "SHALL FLEE"

- Anyone who commits a crime in one State and is subsequently found in any other State is a fugitive from justice.
  - See *Appleyard v. Massachusetts*, 203 U.S. 222 (1906)
- Reason for departure irrelevant
  - See *New Mexico, ex. Rel. Ortiz v. Reed*, 524 U.S. 151 (1998)
- Person who leaves involuntarily is still a fugitive
  - See *Clark v. Comm'r of Corr.*, 281 Conn. 380 (2007)

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### "SHALL"

- Mandatory & Summary procedure in Asylum State
  - See *Puerto Rico v. Brandstad*
- Asylum State has no discretionary power re: extradition of fugitive
  - Discretionary with Nonfugitive
  - See *Michigan v. Doran*, 439 U.S. 282 (1978)
- Extradition is part of the Arrest Process
- Determination of Guilt not an Issue
- Alleged Violation of Constitutional Rights if Extradited not an Issue

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## NONFUGITIVE EXTRADITIONS

- Subject committed an act in one State that resulted in being charged with a crime in demanding state
- Modern Communication helps facilitate the commission of crimes across state lines
- Examples of Nonfugitive Extraditions
  - Nonsupport
  - Transfer of Funds or Drugs
  - Identity Theft
  - Internet Threats
  - "Sexting" with minors
- Application should **not** have reference to fugitivity
- Governor's Discretion
  - See N.C. Gen. Stat. § 15A-726, "The Governor of this State **may** also surrender..."

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## DUTY OF ASYLUM STATE GOVERNOR

The UCEA provides:

Subject to provisions of this act, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, **it is the duty** of the Governor of this State to have arrested and delivered up to the Executive Authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this State.

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## BASIC PRINCIPLES OF EXTRADITION

- **Extradition** – Mandatory & Summary Procedure; Part of the Arrest Process
- **Intent** – Return fugitive to the Demanding State as swiftly as possible for prosecution
- **Purpose** – To preclude any State from becoming a sanctuary for fugitives
- **Fugitive** – A person who commits a crime while present in one State and is subsequently found in another State
- **Nonfugitive** – A person who commits an intentional act in one State that results in a crime in another State.

**Extradition of Nonfugitive is Discretionary**

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## BASIC TERMS OF EXTRADITION

- **Application for Requisition** – Demanding State DA's formal request for extradition to Demanding State's Governor
- **Requisition** – The Demanding State's Governor's formal request for extradition to the Asylum State's Governor to extradite fugitive/nonfugitive
- **Governor's Warrant of Arrest and Rendition** – Arrest warrant issued by Asylum State's Governor upon receipt of Demanding State's Governor's Requisition for the arrest and rendition of fugitive/nonfugitive
- **Waiver** – Consent to extradition without Governor's Warrant

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## THE EXTRADITION PROCESS

- Three Parts –
  - I. Asylum State's Pre-Governor's Warrant Process
  - II. Demanding State's Formal Demand for Extradition Process
  - III. Asylum State's Issuance of Governor's Warrant Process

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## THE BEGINNING

- Person
  - Commits a crime in the Demanding State
  - Parolee/Probationer/Post-Release Absconder
  - Prisoner Escapee
  - Defendant Fails to Appear at Sentencing
- Arrest Warrant is issued in the Demanding State and entered into NCIC
- Subject subsequently found in Asylum State

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## Part I

### ASYLUM STATE'S PRE-GOVERNOR'S WARRANT PROCESS

Fugitive's Arrest, Fugitive Complaint, Arraignment, Waiver, Commitment, Bail before Issuance of Governor's Warrant

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## INITIAL DECISION BY ASYLUM STATE

When a fugitive is found, Asylum State authorities may:

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

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## 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 N.C. Gen. Stat. § 15A-734
  - A judicial determination of Probable Cause within 48 hours will satisfy the requirement of *Gerstein*. See *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991)
- **Fugitive Complaint** must be filed under oath setting forth the ground(s) for arrest

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## 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

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## PRE-SIGNED WAIVER

- There is no statute regarding pre-signed waivers in North Carolina
- The Office of the Governor and the North Carolina Department of Justice take the same stance as the National Association of Extradition Officials – **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.

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## 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 magistrate or supported by affidavit from Demanding State
- If available, certified copies of charging document and arrest warrant from Demanding State should be attached

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## ARRAIGNMENT

Fugitive must be arraigned on fugitive complaint with "all practicable speed" – N.C. Gen. Stat. § 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 willing to waive extradition

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## WAIVERS

- N.C. Gen. Stat. § 15A-746
  - "The judge or clerk of superior court **shall** direct the officer having such person **in custody** to deliver forthwith such person to the duly accredited agent or agents of the demanding state..."
- The waiver itself (ACO-CR-912M) states just above judge's signature –
  - "To any officer having the defendant named above **in custody**:"
  - "You are **DIRECTED to deliver** the defendant together with a copy of this document, to the duly accredited agent(s) of the demanding state..."
- See *Attorney General's Opinion*, 1980 N.C. AG LEXIS 23 (1980)

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## REFUSAL OF EXTRADITION

- Appears many courts use the same "Refusal of Extradition"
  - Signed by Judge with new court date for each 30 days until Order Dismissing Charge
- Notify demanding state the **first** time they appear in Court and refuse.
  - Recently a county notified demanding state on April 22<sup>nd</sup> with the refusal's first paragraph being the only one signed. There was no indication that this was the 60<sup>th</sup> day. The fugitive warrant was issued on February 16<sup>th</sup>. The 90<sup>th</sup> day was May 16<sup>th</sup> and the county dismissed the fugitive warrant.

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## COMMITMENT ORDER N.C. GEN. STAT. §§ 15A-735 & 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

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## BAIL

Fugitive **may** be released upon bail:

- N.C. Gen. Stat. § 15A-735
  - "...the judge or magistrate must, by a warrant reciting the accusation, **commit him** to the county jail for such a time, not exceeding **30 days** and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor..."
- N.C. Gen. Stat. § 15A-736
  - "...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.

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## BAIL

Fugitive **may** be released upon bail **unless**:

- Charged with crime punishable by death or life imprisonment – N.C. Gen. Stat. § 15A-736
- Pre-Signed Waiver
- Fugitive has Waived Extradition – N.C. Gen. Stat. § 15A-746
- Many states, if they allow bonds, will not allow bonds for Escapes and/or Absconders of Probation/Parole/Post-Supervision Release

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## BAIL

Fugitive **may** be released upon bail **unless**:

- Served with Governor's Warrant
  - Office of the Governor agrees with National Association of Extradition Officials' Resolution Opposing Bail
  - Executive Process not Judicial Warrant
  - See *State v. Cronauer*, 65 N.C. App. 449 (1983)
- Once Waiver is signed or Habeas Corpus denied, person belongs to the Demanding State and must be held for transport.

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## Part II

### DEMANDING STATE'S PROCESS: APPLYING FOR GOVERNOR'S REQUISITION

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### DEMANDING STATE'S PROCESS

Involves the Demanding State's **request** for the issuance of **Governor's Warrant of Arrest and Rendition** to the Asylum State's Governor for the extradition of fugitive.

Typically begins when Asylum State court notifies Demanding State that the fugitive is fighting extradition.

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### FORMAL REQUISITION N.C. GEN. § 15A-723

- Formal demand in writing for extradition of fugitive
- Made by Demanding State's Governor upon Asylum State's Governor
- Based upon proper **Application for Requisition** and supporting documents
- **Must allege** fugitive was present in the Demanding State when crime was committed and subsequently fled
- **If nonfugitive**, must allege accused committed an act that intentionally resulted in a crime in the Demanding State

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### "SUBSTANTIALLY" CHARGE

Documents must "substantially" charge the fugitive with having committed a crime under the Demanding State's laws.

- You cannot extradite on Capias alone
- Habeas law says "substantially" charged with a crime
- "Substantially charge" means there must be a showing of probable cause.
  - See *Michigan v. Doran*, 439 U.S. at 285 (1978)

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### APPLICATION FOR REQUISITION N.C. GEN. STAT. § 15A-743

- Written application prepared by Demanding State's prosecutor
- Name and known alias(es) of fugitive set forth
- Circumstances of crime, escape, parole, probation or post-release supervision violation
  - Can be charged with additional crimes once returned to Demanding State – N.C. Gen. Stat. § 15A-748

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## APPLICATION FOR REQUISITION

- Location where fugitive is found in Asylum State
  - Name & Address of jail or address of residence if fugitive has made bail
- Agent nominated to return fugitive to Demanding State
  - Name Sheriff, not transport company or DPS
  - Must be female named to transport female fugitive
- Certified by prosecutor that extradition is not instituted to enforce civil claim in Demanding State.
  - Nonsupport cases

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## APPLICATION FOR REQUISITION

- Two types of written application for extradition
  - Fugitive **charged** with crime – Form Gov1
    - Form Gov1B – Warrant & Affidavit
    - Form Gov1C – Indictment
    - All signed by Clerk of Superior Court
  - Fugitive **convicted** of crime – Form Gov2
    - Supporting Gov2 forms as appropriate
- Certification Form – Form Gov3
  - Judge certifies Clerk’s signature and Clerk certifies Judge’s signature

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## APPLICATION FOR REQUISITION

Essential Documents:

- Certified copy of **charging document**
  - Such as an Indictment, Information, Complaint & Sworn Affidavit, or Sentencing/Disposition Order
- Certified Copy of **any** Warrant for Arrest issued
- If Warrant is the **only** document, must be supported by Affidavit of Probable Cause – sworn before issuing Magistrates – Clerk of Superior Court

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## AFFIDAVIT OF PROBABLE CAUSE

This document **must** include the following:

- Name & Agency of Officer
- Facts supporting the warrant – Do **NOT** use the same language from the warrant. Need the same facts orally sworn to before the judge/magistrate that support the issuance of the warrant for arrest.
- A statement showing the judge/magistrate found probable cause, should be included prior to the signature by judge/magistrate:
  - “I, the undersigned, based on the foregoing find that there is probable cause to support the warrant for arrest against the above-named defendant.”

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## APPLICATION FOR REQUISITION

Essential Documents:

- Identification Documents
  - Photograph – Many states require an Affidavit of Identification with all photographs
    - Do **not** send a photograph without any identifying information
  - Certified Fingerprints
  - Physical Description
  - Do **not** use any documents from CJLeads
- Copies of statute(s) for crime(s) listed
  - Can be printed from General Assembly's website
  - If common law crime, use "*North Carolina Crimes: A Guidebook on the Elements of Crime*" to show punishment level.

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## REVIEW OF APPLICATION

- Demanding State's Governor's Office
- Demanding State's Attorney General's Office
- Secretary of State – Authenticates Court's Verification of Clerk's Certifications
- Upon which the Governor will issue a Requisition to the Asylum State's Governor

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## Part III

### ASYLUM STATE'S PROCESS: ISSUANCE OF GOVERNOR'S WARRANT

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## GOAL

The issuance of the **Governor's Warrant of Arrest and Rendition** by the Asylum State's Governor pursuant to a proper demand for extradition made by Demanding State's Governor

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## RECEIPT OF FORMAL REQUISITION

Upon receipt of formal requisition, Asylum State's Governor:

- **Reviews** requisition, application for requisition, and supporting documents for sufficiency and accuracy
- **Requests** additions or changes if necessary from Demanding State
- **Forwards** requisition, application for requisition and supporting documents to Attorney General for review

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## ATTORNEY GENERAL'S ROLE

- **Reviews** requisition, application for requisition and supporting documents from Demanding State for legal sufficiency
- Provides **legal advice** regarding extradition matters to Governor

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## ISSUANCE OF GOVERNOR'S WARRANT N.C. GEN. STAT. § 15A-727

If 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
  - See N.C. Gen. Stat. § 15A-739

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## ISSUANCE OF GOVERNOR'S WARRANT N.C. GEN. STAT. § 15A-727

- Fugitive cannot avoid local charges with Waiver
  - The time set for transport does not begin until notification is given to the demanding state.
  - The demanding state should not be notified until local time is served because the person is not available for transport.
  - See *Alston v. Nickelson*, 2007 U.S. Dist. LEXIS 80841 (2007)
- If they receive an **active DPS** sentence from local charges:
  - Send Certified Copy of Waiver with them to DPS
    - DPS will honor a waiver for 5 years.
  - Notify Extradition Secretary of DPS sentence
  - Send **entire** Governor's Warrant packet back to Extradition Secretary
    - In the event the subject did not waive, the Governor's Warrant will be served upon completion of DPS Sentence.

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## GOVERNOR'S WARRANT

- A Fugitive Warrant must be dismissed after 90 days
  - N.C. Gen. Stat. §§ 15A-735 & 15A-737
  - 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.
  - **A fugitive warrant dismissal has no bearing upon a Governor's Warrant.**
  - A second Governor's Warrant can be issued in certain circumstances – technical errors, re-arrest on new fugitive warrant, etc.

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## ARRAIGNMENT ON GOVERNOR'S WARRANT

Upon service & arrest:

- Fugitive must be arraigned **forthwith**
- Fugitive must be advised
  - Demand has been made for extradition
  - Statutory right to counsel
  - Right to challenge warrant – **Writ of Habeas Corpus**
- Failure to bring them before a Judge to be Advised is a Class 2 **misdemeanor**
  - See N.C. Gen. Stat. § 15A-731
- **Competence** to assist counsel in extradition proceedings may be raised

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## WRIT OF HABEAS CORPUS N.C. GEN. STAT. § 15A-730

Fugitive may only challenge legality of Governor's Warrant on **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"

See *Michigan v. Doran*, 439 U.S. at 289 (1978)

Please notify Extradition Secretary if a Writ of Habeas Corpus is filed.

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## HABEAS CORPUS PROCESS

The District Attorney's Office will handle habeas proceedings. Please contact Extradition Secretary for habeas materials to use in a habeas hearing.

- A judge should give a reasonable period within which to file – 10 days
- Governor's Warrant *prima facie* evidence all requirements of 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 writ denied, fugitive may appeal
  - Denial is considered a final order. Unless a stay is issued by the N.C. Court of Appeals, they can be extradited even if appealed.

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## EXTRADITION ORDER

Upon arraignment and/or denial of writ of habeas corpus

- Asylum State court orders fugitive extradited
- Sets date for pick-up
  - 18 U.S.C. § 3182 "**may** be discharged after 30 days"
  - Fugitive must file writ of habeas requesting release
- Demanding State is notified fugitive is available for pick-up
- Fugitive is returned to Demanding State for prosecution
- Fugitive may be tried for additional crimes in Demanding State, not specified in requisition
  - See N.C. Gen. Stat. § 15A-748

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## ORIGINAL GOVERNOR'S WARRANT PACKAGE

- This includes the Governor's Warrant, Governor's Requisition, application, cross-certifications, all supporting documents
- This document should **NEVER** be left in the clerk's file
- The originals must be available to the Court and then they should follow the fugitive
- Must be signed by transporting agent
- Clerk is entitled to a copy
- **ALL** original documents in package **must** be returned to Extradition Secretary

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## GOVERNOR'S WARRANT RECALL N.C. GEN. STAT. § 15A-741

- A Governor's Warrant may **only** be recalled by the Extradition Secretary upon information received from the Extradition Coordinator in the Demanding State
- Executive Process –
  - Not Judicial
  - Cannot be recalled by a prosecutor
- Comity amongst Governors
- If you have requested a Governor's Requisition and subsequently decide not to prosecute or you no longer need a Governor's Warrant – Notify the Extradition Secretary **immediately** to effectively Withdraw the Governor's Requisition and Recall the Governor's Warrant

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## ALTERNATIVES TO EXTRADITION

- Executive Agreements
  - Governor's policy to only use when charged with a capital crime
  - Or when a State has not signed on to the Interstate Agreement on Detainers
- Witnesses
- Writs
- Juveniles
- Civil Commitments

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## EXTRADITION COMPLETE

- **Receipt by Agent** - Once ordered back to Demanding State, agents from Demanding State must fill out bottom portion on the back of Governor's Warrant
- **Return Original Governor's Warrant with ALL Supporting Documents** - Clerks may maintain a copy of Governor's Warrant and all supporting documentation, **all originals must** be returned to Extradition Secretary
- **Fugitive Received by NC** - Email Extradition Secretary to notify of fugitive's arrival in North Carolina.

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## BASED UPON THE PRESENTATION: EXTRADITION AND RENDITION TERMS & PROCESS

National Association of Extradition Officials

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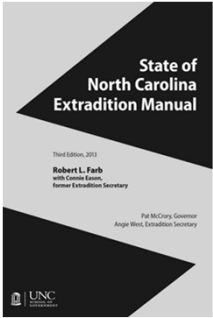
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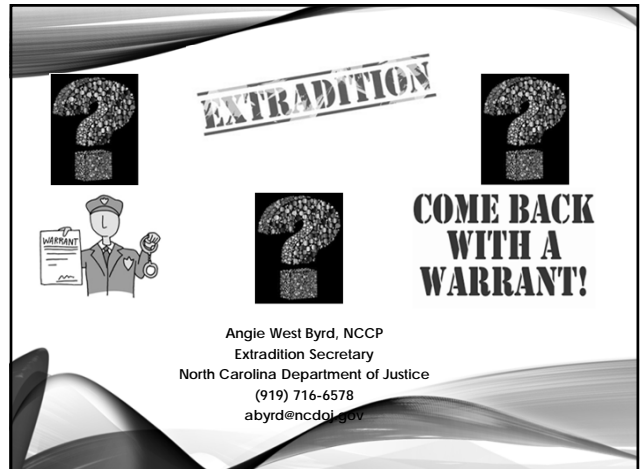
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**EXTRADITION**

**COME BACK WITH A WARRANT!**

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