

MAINE STATE LEGISLATURE

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EIGHTY-FOURTH LEGISLATURE

Senate Document

No. 10

S. P. 153—1927

In Senate, Jan. 8, 1929.

Referred to Committee on Legal Affairs and 500 copies ordered printed. Sent down for concurrence.

ROYDEN V. BROWN, Secretary.

Presented by Senator Oakes of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND TWENTY-NINE

AN EXPLANATION OF
THE ACT TO MAKE UNIFORM THE LAW IN THE
SEVERAL STATES WITH REFERENCE TO THE
EXTRADITION OF PERSONS
CHARGED WITH CRIME*

The Federal Constitution, adopting substantially the language of the earlier articles of Confederation between the thirteen colonies provides, in section 2 of Article VI, that "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."

But notwithstanding the clarity of the above provision, the federal Congress, acting upon an opinion of Attorney-General Randolph, decided in 1793 that the section of the constitution was not self-executing, chiefly because it provided no machinery for its execution, and passed in 1793 an act which has been

* Added after the approval of this Act.

brought forward as sections 5278 and 5279 of the U. S. Revised Statutes of 1875, as follows:—

“5278. Whenever the executive authority of any state or territory demands any person as a fugitive from justice, of the executive authority of any state or territory to which such person had 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; it shall be the duty of the executive authority of the state or territory to which such person had fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs and expenses incurred in the apprehending, securing and transmitting such fugitive to the state or territory making such demand, shall be paid by such state or territory.”

“5279. Any agent so appointed who receives the fugitive into his custody, shall be empowered to transport him to the state or territory from which he has fled. And every person who by force, sets at liberty or rescues the fugitive from such agent while so transporting him, shall be fined not more than five hundred dollars or imprisoned not more than one year.”

The above section of the Constitution and the above federal law, form the basis of the interstate extradition of fugitive criminals in all the states. The Constitution creates the right to demand the fugitive, and the federal law creates the machinery, and they thus distinguish interstate extradition from international extradition which rests entirely upon treaties and is defined by treaty limitations.

But the Act of Congress did not create machinery to cover all the exigencies which arise; and as the federal law of 1793 has never been enlarged by Congress, except to a limited extent in the District of Columbia, to authorize the bringing back of fugitive offenders against the laws of the United States applicable there, it has come to be recognized that the several states may provide machinery for applying the law of extradition in respect to matters not covered by the Act of Congress. Thus the states can legislate upon the method of applying for the

writ of habeas corpus, upon the method of arrest and detention of the fugitive before extradition is demanded, upon the mode of preliminary trial, upon the manner of applying for a requisition, upon the extent of asylum allowed a prisoner when brought back to the state from which he has fled, and upon his exemption from civil process; not to mention other points less important which have always been regulated by local law.

These and many other subjects collateral to the main right to extradition have been the subjects of quite diversified legislation and judicial decision in the various states, and the bodies of law thus built up are quite different throughout America. It therefore appeared wise to the Conference of Commissioners on Uniform State Laws to prepare an act embracing what appear to be the best features of all the various laws of the several states as well as the judicial law applicable, and to offer it as a practicable law for all the states to adopt, thus codifying the practice and promoting uniformity at the same time.

The first draft of the Act was considered by the Commissioners on Uniform State Laws at their annual meeting in 1922, and has been rewritten three times since, being criticized in detail, both in committee meetings and in the entire conference.

Footnotes below the text of most of the sections give the origin of the language where statutory and the judicial decisions upon which it is based when the sections involve restatement or codification of judicial law.

Section 6 of the Act, however, is a new creation of the Conference of Commissioners, designed to cover cases not hitherto reached by extradition law. But if section 6 is objected to as an extension beyond the constitution, it is believed capable of being sustained as an exercise of comity between the states which may adopt it, as justifiable as the universally adopted statute that a fugitive may be arrested on mere information and held by order of court until the application for a requisition can be made in a distant state and a demand for extradition in due form can be issued. Crimes give rise to exigencies; and courts must be sensible.

Unfortunately the Act cannot be adopted by Congress for the District of Columbia without making substantial changes. The District of Columbia is not a territory administered as

such. Congress has authorized the Chief Justice, or in his absence or incapacity to act, an associate justice of the Supreme Court of the District of Columbia to receive a demand for extradition made by the governor of a state; but the method of requiring the remand of criminals to the District of Columbia is not governed by the extradition statutes.

AN ACT Relating to the Extradition of Persons Charged
with Crime, and to Make Uniform the Law with Reference
Thereeto.*

Be it enacted by the People of the State of Maine, as follows:

Section 1. [*Definitions.*] Where appearing in this act,
2 the term "governor" includes any person performing the
3 functions of governor by authority of the law of this state.
4 The term "executive authority" includes the governor, and
5 any person performing the functions of governor in a state
6 other than this state. And the term "state" referring to a
7 state other than this state refers to any other state or terri-
8 tory organized or unorganized of the United States of
9 America.

Sect. 2. [*Criminals to be delivered upon requisition.*]
2 Subject to the qualifications of this act, and the provisions
3 of the constitution of the United States controlling, and
4 acts of Congress in pursuance thereof, it is the duty of the
5 governor of this state to have arrested and delivered up to
6 the executive authority of any other state of the United
7 States any person charged in that state with treason, felony,
8 or other crime, who has fled from justice and is found in
9 this state.

N. B. The Statutes on Interstate Extradition are practically iden-
tical in Alabama, Arizona, California, Idaho, Montana, Nevada,
New Mexico, North Dakota, Oklahoma, South Dakota, and Utah
and also in the Territories of Alaska and Porto Rico.

Sect. 3. [*Form of Demand.*] No demand for the extra-
2 dition of a person charged with crime in another state shall

* As approved at Denver, July, 1926.

3 be recognized by the governor unless in writing and accom-
4 panied by a copy of an indictment found or by an informa-
5 tion supported by affidavit in the state having jurisdiction
6 of the crime, or by a copy of an affidavit made before a
7 magistrate there, together with a copy of any warrant which
8 was issued thereon. The indictment, information, or affi-
9 davit made before the magistrate must substantially charge
10 the person demanded with having committed a crime under
11 the law of that state; and the copy must be authenticated
12 by the executive authority making the demand, which shall
13 be prima facie evidence of its truth.

Drafted from Act of Congress of 1793, and decisions in Davis case, 122 Mass. 324, and Pearce v. Texas, 155 U. S. 387; cf. Scott on Interstate Rendition, paragraph 91. The certification is provided by U. S. R. S. 5278. The effect of the certification is explained in Kentucky v. Dennison, 24 How. 66. The recognition of informations in states which allow them is probably supported by Hogan v. O'Neill, 255 U. S. 52; 65 L. ed. 497.

Sect. 4. [*Governor may investigate case.*] When a de-
2 mand shall be made upon the governor of this state by the
3 executive authority of another state for the surrender of
4 a person so charged with crime, the governor may call upon
5 the attorney general or any prosecuting officer in this state
6 to investigate or assist in investigating the demand, and to
7 report to him the situation and circumstances of the person
8 so demanded, and whether he ought to be surrendered.

(Taken from Connecticut Statutes, Sec. 1566.)

Sect. 5. [*What papers must show.*] A warrant of extra-

2 dition must not be issued unless the documents presented by
3 the executive authority making the demand show that the
4 accused was present in the demanding state at the time of
5 the commission of the alleged crime, and that he thereafter
6 fled from that state, and is now in this state, and that he is
7 lawfully charged by indictment found or by an information
8 filed by a prosecuting officer and supported by affidavit to
9 the facts, or by affidavit made before a magistrate in that
10 state with having committed a crime under the laws of that
11 state, or that he has been convicted of crime in that state and
12 has escaped from confinement or broken his parole.

Drafted from *Hyatt v. People, ex rel Corkran*, 188 U. S. 691, quoted in *Scott on Interstate Rendition*, Sec. 96, and *Innes v. Tobin*, 240 U. S. 127. On the violation of parole, see *Hughes v. Pflanz*, 138 Fed. 980.

Sect. 6. [*Extradition of persons guilty of a crime in another state though being in this state.*] The governor of this
2 state may also surrender, on demand of the executive au-
3 thority of any other state, any person in this state charged
4 on indictment found in such other state with committing an
5 act in this state intentionally resulting in a crime in such
6 other state; and the provisions of this act not otherwise
7 inconsistent shall apply to such cases, notwithstanding that
8 the accused was not in that state at the time of the com-
9 mission of the crime, and has not fled therefrom.
10

Sect. 7. [*Issue of governor's warrant of arrest; its re-*
1 *citals.*] If the governor shall decide that the demand should
2 be complied with, he shall sign a warrant of arrest, which
3 shall be sealed with the state seal, and be directed to a
4

5 sheriff, marshal, coroner, or other person whom he may
6 think fit to entrust with the execution thereof; and the war-
7 rant must substantially recite the facts necessary to the
8 validity of its issue.

(Hyatt v. People, 188 U. S. 691; Jourdan v. Donahue, 84 N. Y. 438; Arnold v. Justice, 84 Minn. 237.)

Sect. 8. [*Manner and place of execution.*] Such war-
2 rant shall authorize the officer or other person to whom
3 directed to arrest the accused at any place where he may
4 be found within the state and to command the aid of all
5 sheriffs and other peace officers in the execution of the
6 warrant and to deliver the accused subject to the provisions
7 of this act, to the duly authorized agent of the demanding
8 state.

Sect. 9. [*Authority of arresting officer.*] Every such
2 officer or other person empowered to make the arrest, shall
3 have the same authority in arresting the accused to com-
4 mand assistance therein, as sheriffs and other officers have
5 by law in the execution of any criminal process directed to
6 them, with the like penalties against those who refuse their
7 assistance.

Sect. 10. [*Accused may apply for writ of habeas corpus.*]
2 No person arrested upon such warrant shall be delivered
3 over to the agent whom the executive authority demanding
4 him shall have appointed to receive him unless he has been
5 informed of the demand made for his surrender and of the
6 crime with which he is charged, and that he has the right
7 to demand legal counsel; and if the prisoner, his friends,

8 or counsel shall state that he or they desire to test the legal-
9 ity of the arrest, the prisoner shall be taken forthwith be-
10 fore a judge of a court of record in this state, who shall
11 fix a reasonable time to be allowed him within which to
12 apply for a writ of habeas corpus. And when such writ
13 is applied for, notice thereof, and of the time and place of
14 hearing thereon, shall be given to the public prosecuting
15 officer of the county in which the arrest is made and in
16 which the accused is in custody, and to the said agent of
17 the demanding state.

(The present law of Mass., Conn., Delaware and Minnesota allows merely an "opportunity" to the accused to demand an investigation. New York and some other states prescribe definite time. For a uniform act, an indefinite time to be made certain by a judge before whom the accused shall be brought, would seem the plan most likely to satisfy all the states. This is the law in Oklahoma.)

Sect. 11. [*Penalty for noncompliance with preceding sec-*
2 *tion.*] Any officer who shall deliver to the agent for extra-
3 dition of the demanding state a person in his custody under
4 the governor's warrant in disobedience to the last section
5 shall be guilty of a misdemeanor, and on conviction shall be
6 fined [not more than one thousand dollars, or be imprisoned
7 not more than six months, or both].

(Conn. Gen. Statutes, Sec. 1568 modified, and Oklahoma.)

Sect. 12. [*Confinement in jail when necessary.*] The
2 officer or person executing the governor's warrant of arrest,
3 or the agent of the demanding state to whom the prisoner
4 may have been delivered, may when necessary confine the
5 prisoner in the jail of any county or city through which he
6 may pass; and the keeper of such jail must receive and

7 safely keep the prisoner until the person having charge of
8 him is ready to proceed on his route, such person being
9 chargeable with the expense of keeping.

Sect. 13. [*Arrest prior to requisition.*] Whenever any
2 person within this state shall be charged on the oath of any
3 credible person before any judge or other magistrate of this
4 state with the commission of any crime in any other state
5 and with having fled from justice; or whenever complaint
6 shall have been made before any judge or other magistrate
7 in this state setting forth on the affidavit of any credible
8 person in another state that a crime has been committed in
9 such other state and that the accused has been charged in
10 such state with the commission of the crime, and has fled
11 therefrom and is believed to have been found in this state,
12 the judge or magistrate shall issue a warrant directed to
13 the sheriff of the county in which the oath or complaint is
14 filed directing him to apprehend the person charged, wher-
15 ever he may be found in this state, and bring him before
16 the same or any other judge, court, or magistrate who may
17 be convenient of access to the place where the arrest may
18 be made, to answer the charge or complaint and affidavit;
19 and a certified copy of the sworn charge or complaint and
20 affidavit upon which the warrant is issued shall be attached
21 to the warrant.

(Arkansas Statutes, Sec. 3674, is almost the same as the law of Colorado, Illinois and Kansas. This section is combined, however, with the law of Indiana, Sec. 1900, modified.)

Sect. 14. [*Arrest without a warrant.*] The arrest of a

2 person may be lawfully made also by an officer or a private
3 citizen without a warrant upon reasonable information that
4 the accused stands charged with a crime punishable by death
5 or life imprisonment in the courts of another state; but
6 when so arrested the accused must be taken before a judge
7 or magistrate with all practicable speed and complaint must
8 be made against him under oath setting forth the ground
9 for the arrest as in the last section; and thereafter his an-
10 swer shall be heard as if he had been arrested on a warrant.

(Scott on Interstate Rendition, paragraphs 105, 107, citing *In re Fetter*, 3 *Zabriskie*, 311, and *Dow's case*, 18 Pa. St. 37. Compare *John Bassett Moore on Extradition*, Vol. II, Sections 516, 591, and *In re Claasen*, 140 U. S. 200, on classification of crime.)

1 Sect. 15. [*Commitment to await requisition: bail.*] If
2 from the examination before the judge or magistrate it ap-
3 pears that the person held is the person charged with having
4 committed the crime alleged and that he probably committed
5 the crime, and, except in cases arising under section six,
6 that he has fled from justice, the judge or magistrate must
7 commit him to jail by a warrant reciting the accusation for
8 such a time specified in the warrant as will enable the arrest
9 of the accused to be made under a warrant of the governor
10 on a requisition of the executive authority of the state hav-
11 ing jurisdiction of the offense, unless the accused give bail
12 as provided in the next section, or until he shall be legally
13 discharged.

(Ala. Code of 1923, Sec. 4168, restricted.)

Sect. 16. [*Bail except in capital and life imprisonment*

2 *cases; condition and requisites of bond.*] Unless the offense
3 with which the prisoner is charged is shown to be an offense
4 punishable by death or life imprisonment under the laws of
5 the state in which it was committed, the judge or magis-
6 trate must admit the person arrested to bail by bond or
7 undertaking, with sufficient sureties, and in such sum as he
8 deems proper, for his appearance before him at a time
9 specified in such bond or undertaking, and for his surren-
10 der, to be arrested upon the warrant of the governor of this
11 state.

(Alabama Code of 1923, Section 4169, modified.)

Sect. 17. [*If no arrest made on governor's warrant before*
2 *the time specified.*] If the accused is not arrested under
3 warrant of the governor by the expiration of the time speci-
4 fied in the warrant, bond, or undertaking, the judge or
5 magistrate may discharge him or may recommit him to a
6 further day, or may again take bail for his appearance and
7 surrender, as provided in section sixteen; and at the ex-
8 piration of the second period of commitment, or if he has
9 been bailed and appeared according to the terms of his bond
10 or undertaking, the judge or magistrate may either dis-
11 charge him, or may require him to enter into a new bond
12 or undertaking, to appear and surrender himself at another
13 day.

Sect. 18. [*Forfeiture of bail.*] If the prisoner is admit-
2 ted to bail, and fails to appear and surrender himself ac-
3 cording to the condition of his bond, the court, by proper

4 order, shall declare the bond forfeited; and recovery may
5 be had thereon in the name of the state as in the case of
6 other bonds or undertakings given by the accused in crim-
7 inal proceedings within this state.

Sect. 19. [*If a prosecution has already been instituted in
2 this state.*] If a criminal prosecution has been instituted
3 against such person under the laws of this state and is still
4 pending, the governor at his discretion either may surrender
5 him on the demand of the executive authority of another
6 state, or may hold him until he has been tried and dis-
7 charged, or convicted and punished in this state.

(Ala. Code of 1923, Sec. 4174, changed.)

Sect. 20. [*Guilt or innocence of accused, when inquired
2 into.*] The guilt or innocence of the accused as to the crime
3 of which he is charged may not be inquired into by the gov-
4 ernor or in any proceeding after the demand for extradition
5 accompanied by a charge of crime in legal form as above
6 provided shall have been presented to the governor, except
7 as it may be involved in identifying the person held as the
8 person charged with the crime.

(Scott on Interstate Rendition, Chapter XVIII.)

Sect. 21. [*Governor may recall warrant or issue alias.*]
2 The governor may recall his warrant of arrest, or may issue
3 another warrant whenever he deems proper.

Sect. 22. [*Fugitives from this state.*] Whenever the gov-
2 ernor of this state shall demand a person charged with
3 crime in this state from the chief executive of any other

4 state, or from the chief justice or an associate justice of
5 the supreme court of the District of Columbia authorized
6 to receive such demand under the laws of the United States,
7 he shall issue a warrant under the seal of this state, to some
8 agent, commanding him to receive the person so charged if
9 delivered to him and convey him to the proper officer of the
10 county in this state in which the offense was committed.

(Illinois Law, Sec. 8, modified.)

Sect. 23. [*Manner of applying for requisition.*] When
2 the return to this state of a person charged with crime in
3 this state is required, the prosecuting attorney [of the coun-
4 ty in which the offense is committed] shall present to the
5 governor his written application for a requisition for the
6 return of the person charged, in which application shall be
7 stated the name of the person so charged, the crime charged
8 against him, and the approximate time, place and circum-
9 stances of its committal, the state in which he is believed
10 to be, including the location of the accused therein at the
11 time the application is made, and certifying that in the opin-
12 ion of the said prosecuting attorney the ends of justice re-
13 quire the arrest and return of the accused to this state for
14 trial, and that the proceeding is not instituted to enforce a
15 private claim. The application shall be verified by affidavit,
16 shall be executed in duplicate and shall be accompanied by
17 two certified copies of the indictment returned, or infor-
18 mation and affidavit filed, or of the complaint made to the
19 magistrate, stating the offense with which the accused is

20 charged. The prosecuting officer may also attach such fur-
21 ther affidavits and other documents in duplicate as he shall
22 deem proper to be submitted with such application. One
23 copy of the application with the action of the governor indi-
24 cated by endorsement thereon, and one of the certified copies
25 of the indictment or complaint or information and affidavit,
26 shall be filed in the office of the [secretary of state] to re-
27 main of record in that office. The other copies of all papers
28 shall be forwarded with the governor's requisition.

Sect. 24. [*Costs and expenses.*] [When the punishment
2 of the crime shall be the confinement of the criminal in the
3 penitentiary, the expenses shall be paid out of the state
4 treasury, on the certificate of the governor and warrant of
5 the auditor; and in all other cases they shall be paid out of
6 the county treasury in the county wherein the crime is
7 alleged to have been committed. The expenses shall be the
8 fees paid to the officers of the state on whose governor the
9 requisition is made, and not exceeding . . . cents a mile for
10 all necessary travel in returning such prisoner.]

(Illinois Law, Section 11. This section is placed in brackets to indicate that it may be omitted from the Act in states where it does not seem wise to include it.)

Sect. 25. [*Exemption from Civil Process.*] A person
2 brought into this state on extradition based on a criminal
3 charge, shall not be subject to service of personal process
4 in civil actions arising out of the same facts as the criminal
5 proceeding to answer which he is returned, until he has been
6 convicted in the criminal proceeding, or if acquitted, until

7 he has had ample opportunity to return to the state from
8 which he was extradited.

(Scott on Interstate Rendition, 136.)

Sect. 26. [*No right of asylum.*] After a person has been
2 brought back to this state upon extradition proceedings, he
3 may be tried in this state for other crimes which he may be
4 charged with having committed here, as well as that speci-
5 fied in the requisition for his extradition.

(Lascelles v. Georgia, 148 U. S. 543.)

Sect. 27. [*Interpretation.*] This act shall be so inter-
2 preted and construed as to effectuate its general purpose to
3 make uniform the law of those states which enact it.

Sect. 28. [*Constitutionality.*] If any part of this act is
2 for any reason declared void, such invalidity shall not affect
3 the validity of the remaining portions of this act.

Sect. 29. [*Repeal.*] All acts or parts of acts and ad-
2 ministrative rules inconsistent with this act are hereby re-
3 pealed.

Sect. 30. [*Short title.*] This act may be cited as the
2 Uniform Criminal Extradition Act.

Sect. 31. [*Time of taking effect.*] This act shall take
2 effect on the.....day of.....19....