

# MAINE STATE LEGISLATURE

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# E I G H T Y - N I N T H   L E G I S L A T U R E

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**Legislative Document**

**No. 37**

S. P. 71

In Senate, January 18, 1939.

Referred to Committee on Judiciary and sent down for concurrence. 500 copies ordered printed.

ROYDEN V. BROWN, Secretary.

Presented by Senator Laughlin of Cumberland.

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## S T A T E   O F   M A I N E

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
THIRTY-NINE

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### AN ACT Relating to Extradition.

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

**Sec. 1. R. S., c. 150, § 3, amended.** Section 3 of chapter 150 of the revised statutes is hereby repealed and the following substituted in lieu thereof:

**‘Sec. 3. Form of demand.** No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under section 6, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, which said demand shall be accompanied by a copy of an indictment found, or information, supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate in such state, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that

state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.'

**Sec. 2. R. S., c. 150, § 5, amended.** Section 5 of chapter 150 of the revised statutes as amended by section 1 of chapter 151 of the public laws of 1933, is hereby repealed and the following substituted in lieu thereof.

'**Sec. 5. Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion.** When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution or imprisonment following conviction in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in section 23 of this act with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.'

**Sec. 3. R. S., c. 150, § 6, amended.** Section 6 of chapter 150 of the revised statutes as amended by section 2 of chapter 151 of the public laws of 1933 is hereby repealed and the following substituted in lieu thereof:

'**Sec. 6. Extradition of persons not present in demanding state at time of commission of crime.** The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 3 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.'

**Sec. 4. R. S., c. 150, § 10, amended.** Section 10 of chapter 150 of the revised statutes is hereby repealed and the following substituted in lieu thereof.

'**Sec. 10. Rights of accused person; application for writ of habeas corpus.** No person arrested upon such warrant shall be delivered over to the agent

whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.'

Sec. 5. R. S., c. 150, § 12, amended. Section 12 of chapter 150 of the revised statutes is hereby amended by adding thereto the following paragraph.

'The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.'

Sec. 6. R. S., c. 150, § 13, amended. Section 13 of chapter 150 of the revised statutes as amended by section 4 of chapter 151 of the public laws of 1933, is hereby repealed and the following substituted in lieu thereof.

'Sec. 13. Arrest prior to requisition. Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under section 6 with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail,

probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 6, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commending him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.'

**Sec. 7. R. S., c. 150, § 22 amended.** Section 22 of chapter 150 of the revised statutes is hereby amended to read as follows:

'**Sec. 22. Governor of this state demanding person from another state to issue warrant to agent to receive accused.** Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state, from chief executive authority of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.'

**Sec. 8. R. S., c. 150, § 23, amended.** Section 23 of chapter 150 of the revised statutes is hereby repealed and the following substituted in lieu thereof:

'**Sec. 23. Application for issuance of requisition; by whom made; contents. I.** When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and

circumstances of its commission, the state in which he is believed to be, including the location of the accused therein, at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

II. When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

III. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.'

Sec. 9. R. S., c. 150, additional. Chapter 150 of the revised statutes is hereby amended by adding thereto, 2 new sections to be numbered 25-A and 25-B and to read as follows:

'Sec. 25-A. Written waiver of extradition proceedings. Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections 7 and 8 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of

the judge of any court of record within this state a writing which states and he consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section 10.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge 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, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state.'

'Sec. 25-B. Non-waiver by this state. Nothing in this chapter contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.'