

# MAINE STATE LEGISLATURE

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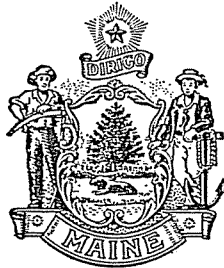
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## CHAPTER 139.

### UNIFORM CRIMINAL EXTRADITION ACT.

**Sec. 1. Terms "governor", "executive authority", and "state" defined.** R. S. c. 150, § 1. Where appearing in this chapter, the following terms shall have the following meaning:

"Governor" includes any person performing the functions of governor by authority of the law of this state.

"Executive authority" includes the governor, and any person performing the functions of governor in a state other than this state.

"State," referring to a state other than this state, refers to any other state or territory organized or unorganized of the United States of America.

**Sec. 2. Governor to deliver up person charged with crime in other state.** R. S. c. 150, § 2. Subject to the qualifications of this chapter and the provisions of the constitution of the United States controlling and acts of congress 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.

**Sec. 3. Form of demand.** R. S. c. 150, § 3. 1939, c. 10, § 1. 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 the provisions of 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.

139 Me. 204.

**Sec. 4. Attorney-general to investigate at demand of governor.** R. S. c. 150, § 4. When a demand is made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney-general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

**Sec. 5. Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion.** R. S. c. 150, § 5. 1933, c. 151, § 1. 1939, c. 10, § 2. 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 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 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. 6. Extradition of persons not present in demanding state at time of commission of crime.** R. S. c. 150, § 6. 1933, c. 151, § 2. 1939, c. 10, § 3. The governor 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 chapter, 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.

139 Me. 209.

**Sec. 7. If extradition to be allowed, governor to make out warrant and deliver it to officer.** R. S. c. 150, § 7. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal and be directed to a sheriff, marshal, or other person whom he may think fit to entrust with the execution thereof; and the warrant must substantially recite the facts necessary to the validity of its issue.

**Sec. 8. Such warrant to authorize arrest.** R. S. c. 150, § 8. Such warrant shall authorize the officer or other person to whom directed to arrest the accused at any place where he may be found within the state and to command the aid of all sheriffs and other peace officers in the execution of the warrant and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state.

**Sec. 9. Officer arresting may command assistance.** R. S. c. 150, § 9. Every such officer or other person empowered to make the arrest shall have the same authority, in arresting the accused, to command assistance therein as sheriffs and other officers have by law in the execution of any criminal process directed to them, with the like penalties against those who refuse their assistance.

**Sec. 10. Rights of accused person; application for writ of habeas corpus.** R. S. c. 150, § 10. 1939, c. 10, § 4. 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. 11. Penalty for disobedience of the provisions of § 10.** R. S. c. 150, § 11. 1933, c. 151, § 3. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant in disobedience of the provisions of section 10 shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than 6 months, or by both such fine and imprisonment.

**Sec. 12. Prisoner may be confined in jail.** R. S. c. 150, § 12. 1939, c. 10, § 5. The officer or person executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, 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 person having charge of him is ready to proceed on his route, such person being chargeable with the expense of keeping.

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. 13. Arrest prior to requisition.** R. S. c. 150, § 13. 1933, c. 151, § 4. 1939, c. 10, § 6. 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 the provisions of 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 the provisions of 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 commanding 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. 14. Arrest may be made without warrant if person charged with crime punishable by death or life imprisonment; hearing to be held.** R. S. c. 150, § 14. 1933, c. 151, § 5. The arrest of a person may be lawfully made also by an officer

or a private citizen without a warrant, upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding 1 year; but when so arrested, the accused must be taken before a judge or magistrate with all practicable speed, and complaint must be made against him under oath setting forth the ground for the arrest as in section 13; and thereafter his answer shall be heard as if he had been arrested on a warrant.

**Sec. 15. Judge to commit him to jail until such time as warrant for extradition may be made, unless he gives bail or is discharged.** R. S. c. 150, § 15. If, from the examination before the judge or magistrate, it appears that the person held is the person charged with having committed the crime alleged and that he probably committed the crime, and, except in cases arising under the provisions of section 6, that he has fled from justice, the judge or magistrate must commit him to jail by a warrant reciting the accusation for such a time specified in the warrant as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in section 16, or until he shall be legally discharged.

**Sec. 16. Prisoner may give bail unless offense is punishable by death or life imprisonment.** R. S. c. 150, § 16. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, the judge or magistrate must admit the person arrested to bail by bond or undertaking, with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in such bond or undertaking, and for his surrender, to be arrested upon the warrant of the governor of this state.

**Sec. 17. Procedure if warrant of governor is not made at expiration of first warrant.** R. S. c. 150, § 17. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, the judge or magistrate may discharge him or may recommit him to a further day, or may again take bail for his appearance and surrender, as provided in section 16; and at the expiration of the 2nd period of commitment, or if he has been bailed and appeared according to the terms of his bond or undertaking, the judge or magistrate may either discharge him, or may require him to enter into a new bond or undertaking, to appear and surrender himself at another day.

**Sec. 18. Proceedings if prisoner admitted to bail fails to appear.** R. S. c. 150, § 18. If the prisoner is admitted to bail and fails to appear and surrender himself according to the condition of his bond, the court, by proper order, shall declare the bond forfeited; and recovery may be had thereon in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within the state.

**Sec. 19. If being tried in this state, governor may either surrender him or hold him.** R. S. c. 150, § 19. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor at his discretion either may surrender him on the demand of the executive authority of another state, or may hold him until he has been tried and discharged, or convicted and punished in this state.

**Sec. 20. Guilt or innocence of accused not to be inquired into after extradition demanded.** R. S. c. 150, § 20. The guilt or innocence of the accused as to

the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

**Sec. 21. Warrant for arrest may be recalled or another issued. R. S. c. 150, § 21.** The governor may recall his warrant of arrest, or may issue another warrant whenever he deems proper.

**Sec. 22. Governor of this state demanding person from another state to issue warrant to agent to receive accused. R. S. c. 150, § 22. 1939, c. 10, § 7.** Whenever the governor 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 the 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. 23. Application for issuance of requisition; by whom made; contents. R. S. c. 150, § 23. 1939, c. 10, § 8.**

**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 2 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 indorsement 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. 24. Expenses to be paid out of state treasury or county treasury depending on crime charged.** R. S. c. 150, § 24. 1931, c. 216. When the punishment of the crime shall be the confinement of the criminal in the penitentiary, the expenses shall be paid out of the state treasury, on the certificate of the governor and warrant of the controller; and in all other cases they shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made, and not exceeding 10c a mile for all necessary travel in returning such prisoner.

**Sec. 25. Service of process in civil actions not to be made on person brought into state on extradition based on criminal charge.** R. S. c. 150, § 25. A person brought into this state on extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is returned, until he has been convicted in the criminal proceeding or, if acquitted, until he has had ample opportunity to return to the state from which he was extradited.

**Sec. 26. Written waiver of extradition proceedings.** 1939, c. 10, § 9. 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 a judge of any court of record within this state a writing which states that 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. 27. Non-waiver by this state.** 1939, c. 10, § 9. 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 the provisions of 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.



Sec. 28. Accused may be tried for other crimes as well as one specified in extradition proceedings. R. S. c. 150, § 26. After a person has been brought back to this state upon extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here, as well as that specified in the requisition for his extradition.

Sec. 29. Name and purpose of chapter. R. S. c. 150, §§ 27, 29. This chapter may be cited as the "Uniform Criminal Extradition Act" and shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

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## CHAPTER 140.

### COURTS OF PROBATE.

- Sections 1- 2 Courts of Record. Jurisdiction in Equity.
- Sections 3-21 Selection, Powers, and Duties of Judges of Probate.
- Sections 22-31 Election, Powers, and Duties of Registers of Probate.
- Sections 32-38 Supreme Court of Probate.
- Sections 39-48 Costs and Fees.
- Sections 49-50 Rules of Practice.
- Sections 51-53 Notices.

#### Courts of Record. Jurisdiction in Equity

Sec. 1. Courts of record; seal; punishment for contempt. R. S. c. 75, § 1. Courts of probate are courts of record. Each shall have an official seal, of which the register shall have the custody. They may issue any process necessary for the discharge of their official duties, and punish for contempt of their authority.

\*47 Me. 86; 63 Me. 248; 130 Me. 171.

Sec. 2. Jurisdiction in equity. R. S. c. 75, § 2. The courts of probate shall have jurisdiction in equity, concurrent with the supreme judicial court and the superior court, of all cases and matters relating to the administration of the estates of deceased persons, to wills, and to trusts which are created by will or other written instrument. Such jurisdiction may be exercised upon bill or petition according to the usual course of proceedings in equity.

119 Me. 287; \*120 Me. 151; 121 Me. 401; 129 Me. 349; 136 Me. 79.

#### Selection, Powers, and Duties of Judges of Probate

Sec. 3. Judges, how selected; terms commence, when; salary. R. S. c. 75, § 3; c. 125, § 39. 1933, c. 62. 1937, c. 108. 1939, c. 296, § 4. 1943, cc. 228, 241, 324. Judges of probate are elected or appointed as provided in the constitution. Only attorneys at law admitted to the general practice of law in this state and resident therein may be elected or appointed as judges of probate. Their election is effected and determined as is provided respecting county commissioners; and they enter upon the discharge of their duties on the 1st day of January following; but, when appointed to fill vacancies, their terms commence on their appointment.