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THE MAINE PROSECUTOR

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EXTRADITION MANUAL

December 1973

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Department of Attorney General

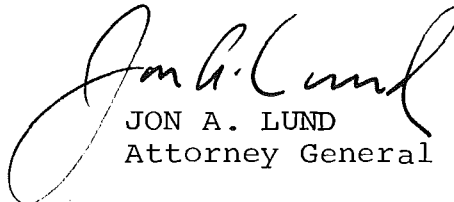
MESSAGE FROM THE ATTORNEY GENERAL

JON A. LUND

I am pleased to announce the publication of the first MANUAL in our series, THE MAINE PROSECUTOR. The EXTRADITION MANUAL, which is designed to provide Maine prosecuting attorneys with a helpful outline of Maine extradition law, was prepared by two law student interns, Gary W. Libby and Bruce R. Merrell, under the supervision of Deputy Attorney General George C. West.

The manual contains all of the extradition materials that have been previously distributed to county attorneys plus new material concerning two issues commonly raised at habeas corpus proceedings: fugitive status and identity. The extradition materials have been revised and reorganized to provide a more accessible reference tool for county attorneys and judges and to facilitate future additions and changes.

We welcome all ideas, comments, and suggestions as to the improvement of the EXTRADITION MANUAL, as well as suggestions as to worthwhile topics for future manuals.


JON A. LUND
Attorney General

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**THE
MAINE
PROSECUTOR**

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THE MAINE PROSECUTOR is designed to provide prosecuting attorneys in Maine with up-to-date information on all aspects of prosecution. The vehicles for presenting this information are a monthly BULLETIN and MANUALS on various aspects of prosecution to be published as they are prepared. The key to the success of this endeavor will be communication and coordination. The attorneys in the Law Enforcement Education Section will maintain regular contact with all county attorney offices. In turn, we would appreciate as much input as possible from the local prosecution level both as to materials to be included in THE MAINE PROSECUTOR and as to comments and suggestions for its continued improvement. Please either call us at 289-2146 or write to:

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JON A. LUND

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I. DEFINITIONS

EXTRADITION is the surrender, by one nation or state to another, of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which being competent to try and punish him, demands the surrender. 35 C.J.S. Extradition §1 (1960).

ASYLUM STATE is the state where a fugitive or defendant has taken refuge.

DEMANDING STATE is the state which seeks the extradition or return of the fugitive or defendant.

FUGITIVE FROM JUSTICE is a person who, while bodily present in the demanding state, incurred guilt before leaving that state for an asylum state. State v. Hale, 157 Me. 361, 172 A.2d 631 (1961). The element of flight from the demanding state must be proven. Ex parte King, 139 Me. 203, 28 A.2d 562 (1942). Whether one is a "fugitive" is a question of fact.

EXECUTIVE AUTHORITY includes the Governor and any person performing the functions of a governor in a state, province, commonwealth, etc., other than this State. 15 M.R.S.A. §201(1).

II. SOURCES OF LAW

The law of extradition is derived from constitutional and statutory sources and from agreements or compacts among the states.

A. The Federal Act

1. United States Constitution.

The primary source of extradition law is Article IV, Section 2, Clause 2 of the United States Constitution:

"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."

2. 18 U.S.C. §3181 et seq.

The constitutional provision concerning extradition is implemented in Title 18, United States Code, sections 3181 et seq., the key provision of which is 18 U.S.C. §3182:

"Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has 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 the chief magistrate of the State or Territory from whence the person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days of the time of arrest, the prisoner may be discharged."

These constitutional and statutory provisions are commonly referred to as the "Federal Act."

B. The Uniform Criminal Extradition Act (U.C.E.A.)

A second source of extradition law is the Uniform Criminal Extradition Act (herein referred to as the U.C.E.A.), which has been adopted in Maine as 15 M.R.S.A. §201 et seq. All the states have adopted the U.C.E.A. except the following: District of Columbia, Louisiana, Mississippi, Nevada, North Dakota, and South Carolina. (See APPENDIX I). When dealing with an extradition to or from one of these states, the prosecuting attorney should check that state's requirements in the appropriate state code before proceeding.

Also, the Uniform Reciprocal Enforcement of Support Act has been adopted in every state. Its criminal provisions contemplate the use of the U.C.E.A. to enforce criminal non-support.

III. EXTRADITION PROCEDURE

A. Forms and Requirements of Extradition Papers: Outgoing.

1. Fugitive Sought by Prosecuting Attorney

When the prosecuting attorney desires the return to this State of a fugitive from justice, he should make written application to the Governor of this State for a requisition for the return of the person sought. This application must contain:

- (1) The name of the person sought;
- (2) The crime charged against him;
- (3) The approximate time, place and circumstances of the crime's commission;
- (4) The state in which the fugitive is believed to be located, including the location of the accused therein at the time the application is made;
- (5) Certification by the prosecuting attorney that the ends of justice require the arrest and return of the fugitive to this state and that the proceeding is not being instituted to enforce a private claim;
- (6) The name of an agent or agents to be appointed by the Governor to return the fugitive. If the fugitive is female, one of the agents must be a female; and
- (7) A statement revealing the particular law enforcement agency in the other state who is holding the fugitive and to whom the warrant of the Governor of the asylum state is to be addressed.

(Printed forms on which to make the above application are available from the Secretary of State's Office.)

- (8) There shall also be attached an affidavit of identification signed by a person familiar with the fugitive. This affidavit shall contain a description of the person being sought, and if possible, a picture and fingerprints. This affidavit is extremely important since a fugitive who attempts to resist extradition usually does so on the ground that he is not the person being sought. This affidavit should be attested as a true copy by the Clerk of the Court attesting the other papers. The prosecuting attorney, or other appropriate person, may attach further affidavits or other documents.

If the person being sought has been convicted of a crime but has not been imprisoned, and has fled this State, a written application addressed to the Governor of this State for requisition for the return of such person may be made by the prosecuting attorney of the county in which the offense was committed.

2. Fugitive Sought by Warden, Sheriff or State Parole Board.

Under appropriate circumstances, written application to the Governor for a requisition for the return of a fugitive may be made by the warden of the institution or the sheriff of the county from which an escape was effected.

The sheriff, as well as the prosecutor, may seek the extradition of one who has breached the terms of his bail.

The State Parole Board may also make application for the extradition of one who has breached the terms of probation or parole.

The above applications shall contain:

- (1) The name of the person sought;
- (2) The crime for which he was convicted;
- (3) The circumstances of his escape from confinement or the breach of the terms of his bail, probation, or parole;
- (4) The state in which he is believed to be located, including the location of the accused at the time of application;
- (5) Same as number 6, supra, relative to agents; and
- (6) Same as number 7, supra, relative to law enforcement agency holding fugitive;
- (7) Same as number 8, supra, relative to identification affidavit.

The form for these applications, except that for breaking probation and parole, is that used for the ordinary fugitive case, adapted to the special case involved.

All applications to the Governor of this State for requisition for the return of a fugitive shall be verified by affidavit, executed in triplicate, and accompanied by three (3) certified copies of:

The indictment returned, or information and affidavit filed, or

The complaint and warrant, which must be signed by a District Court Judge,¹ or

¹The question may arise as to whether District Court clerks may issue warrants. 15 M.R.S.A. §707 authorizes a clerk of the District Court who is a Justice of the Peace to issue warrants when the Chief Judge is satisfied that the Clerk possesses the necessary training and learning to perform such function. Moreover, the United States Supreme Court, in Shadwick v. Tampa, 407 U.S. 345, 92 S.Ct. 2119, 32 L.Ed.2d 783 (1972), has stated that it is

The judgment of conviction, or

The sentence imposed.

In some states extra copies of these papers are necessary. Reference should be made to APPENDIX II to determine whether additional copies are required by a particular State.

The papers necessary to support an extradition request shall be presented to the Attorney General's Department when complete. There they will be reviewed to ensure compliance with the U.C.E.A. If found to be in proper form, they will be sent to the Secretary of State for certification of all original signatures and preparation of the Governor's requisition and warrant to an agent commanding him to receive the person sought and convey him back to this State.

When the papers are completed, two (2) or more copies are taken to the Governor for his signature. These are then attested by the Secretary of State. One copy is retained in the Secretary of State's files.

Once all the signatures and attestations are completed, the Department of the Attorney General forwards two (2) or more copies to the Governor of the asylum State.

not unconstitutional to allow a clerk to issue a warrant. However, many states have questioned warrants issued by clerks even when the clerk is also a Justice of the Peace. By agreement with the Chief Judge all complaints and warrants to be used in extradition cases must be signed by a District Court Judge.

B. Forms and Requirements of Extradition Papers: Incoming

Incoming papers are submitted to the Governor of the State of Maine by the Governor of the demanding state. Requirements for incoming papers are similar to those for outgoing papers.

A demand for extradition must meet the following requirements:

(A) There must be a written requisition signed by the Governor of the demanding state, specifying:

- (1) That the charging document is authentic;
- (2) The name of the fugitive;
- (3) The crime charged;
- (4) That the fugitive is believed to be in this State; and
- (5) That the fugitive was present in the demanding state at the time of the commission of the alleged crime and that thereafter he fled from that state

or

That the fugitive committed 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;

- (6) The name of the agent or agents appointed to receive the fugitive.

(B) The charging document must contain:

- (1) A copy of an indictment found, or an information supported by an affidavit in the state having jurisdiction of the crime; or

A copy of an affidavit made before a magistrate of the demanding state, together with a copy of any warrant issued thereon; or

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 sought has escaped from confinement or has broken the terms of his bail, probation or parole;

- (2) Such document must substantially charge the person demanded with having committed a crime under the law of the demanding state;
- (3) An affidavit of identification signed by a person familiar with the fugitive. A picture and fingerprints should be attached when available;
- (4) A statement as to the law enforcement agency holding the fugitive to whom the Governor's warrant may be sent.

C. Arrest of a Fugitive Seeking Asylum Within this State

1. Arrest on the Governor's Warrant

A governor cannot be forced to issue an extradition warrant. He may, in the exercise of his discretion, refuse to surrender the fugitive, even though the action may be arbitrary. The Governor of this State may request the Attorney General or any prosecuting officer to investigate the demand.

Once the Governor decides to comply with a demand for extradition, 15 M.R.S.A. §207 applies. An arrest is made under §207 in substantially the same manner as any other arrest. Section 207 directs the Governor to sign a warrant of arrest which shall be sealed with the State Seal. This warrant shall be directed to a sheriff, marshal or other person whom the governor may think fit to execute the warrant. This warrant must substantially recite

the facts sufficient to show the validity of its issue.

The person directed to execute the warrant is authorized to command the assistance of others. 15 M.R.S.A. §209.

The Governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

After arrest, hearing may be had before the Governor, but such hearing is not required. Ex parte King, 139 Me. 203, 28 A.2d 562 (1942). If a hearing is granted, the fugitive may raise only those issues which could be heard by a court on petition for a writ of habeas corpus.

2. Arrest Prior to Requisition by the Governor of the Demanding State

15 M.R.S.A. §213 provides that a judge or magistrate may issue a warrant of arrest prior to a requisition for return by the governor of a demanding state whenever any person within this State is wanted for the commission of a crime in another state. A warrant issued under section 213 is commonly called a "fugitive warrant" and is issued only upon a showing of probable cause to believe that the person sought is a fugitive from justice. The execution of such a warrant is the same as that of any warrant of arrest. The warrant is directed to any peace officer, and commands him to apprehend the fugitive wherever the latter is found within this State, and to bring the fugitive before any judge, magistrate or court available in or convenient to the

place where the arrest was made so that he may answer the charge or complaint against him.

15 M.R.S.A. §214 authorizes either an officer or a private citizen to arrest a person who stands charged in the courts of another state of a crime punishable by death or imprisonment for a term exceeding one year. Once such an arrest is made, the accused must be brought before a judge or magistrate as soon as possible, and a complaint must be made under oath setting forth the grounds for his arrest. Once this is done the accused shall be heard as if he had been arrested on a warrant.

D. Presentation to a Magistrate

When a person has been arrested by an officer (with or without a warrant) or a private citizen, that person must be brought before a judge or magistrate to be heard on the complaint made against him. 15 M.R.S.A. §§213 and 214.

1. Waiver of Extradition Proceedings

Upon presentation to a judge or magistrate any person arrested in this State and subject to extradition to another state may waive extradition proceedings after being advised of his rights to the issuance and service of the Governor's warrant. Written notice of the person's waiver of extradition is to be forwarded to the Office of the Governor and filed therein. 15 M.R.S.A. §226.

2. Hearing; Commitment; Bail

If there is no waiver of extradition, then, after examination, the judge or magistrate must confine any person charged

with having committed a crime in another state if it appears (1) that he is the person sought, (2) that he probably committed the crime, and (3) except in cases arising under 15 M.R.S.A. §206, that he has fled from justice. This commitment, which is made by a warrant reciting the accusation against the accused, is for a period of time sufficient to allow the arrest of the accused to be made under a warrant of the Governor on the requisition of the executive authority of the demanding state. However, unless the prisoner is accused of an offense punishable by death or life imprisonment, he must be admitted to bail. 15 M.R.S.A. §§215 and 216.

If the accused is not arrested under the Governor's warrant by the expiration of the time specified in the "fugitive warrant," bond or undertaking, the judge or magistrate may discharge him, recommit him to a further day, or again take bail for his appearance. This procedure may also be followed if the accused has not been arrested on a Governor's warrant by the expiration of the second period of commitment. 15 M.R.S.A. §217. One may not be detained pending extradition for an indefinite period, but only for a reasonable time. 35 C.J.S. Extradition §12(d).

15 M.R.S.A. §218 provides that if a prisoner admitted to bail fails to appear and surrender himself according to the condition of his bond, the court may declare the bond forfeited.

E. Habeas Corpus

No fugitive may be delivered over to the agent of the demanding state unless he has been taken forthwith before a judge of a court of record in this State. The delivery of the accused to the agent of the demanding state without first providing the accused with an opportunity to assert his right to a habeas corpus petition and hearing is prohibited by 15 M.R.S.A. §211. That section provides for punishment by a fine of not more than \$1,000 or by imprisonment for not more than 6 months, or by both.

The judge must inform the fugitive that his extradition has been demanded, the crime with which he has been charged, and that he has a right to legal counsel. If the fugitive or his counsel desires to test the legality of his arrest, the judge must fix a reasonable time within which to apply for a Writ of Habeas Corpus. Notice of the time and place of the hearing shall be given to all parties. 15 M.R.S.A. §210.

Only the following issues may be raised at the habeas corpus hearing (or at a hearing before the Governor prior to arrest on a Governor's warrant):

- (1) Whether the accused is substantially charged with a crime against the laws of the demanding state. Burke v. State, 265 A.2d 489, 492 (Me. 1970);
- (2) Whether the accused is the person so charged;
- (3) Whether the accused was in the demanding state at the time of the commission of the crime; and

- (4) Whether the warrants of arrest and of requisition with required supporting documents comply with the statutes and justify the rendition warrant. Poulin v. Bonenfant, 251 A.2d 436, 438 (Me. 1969).

The question of the accused's guilt or innocence is irrelevant and may not be considered in a habeas corpus proceeding since that is a matter for determination by the courts of the demanding state. Ex parte King, 139 Me. 203, 206, 28 A.2d 562, 564 (1942).

Two defenses commonly raised in habeas corpus proceedings by prisoners in the asylum state involve (1) fugitive status and (2) identity.

1. Fugitive Status

In defense of extradition as a fugitive from justice, the petitioner in a habeas corpus proceeding may likely argue that he is not a fugitive.

For a person to be a "fugitive from justice," two things are essential:

- (1) The person, having been in the demanding state, must have left it and must be within another jurisdiction; and
- (2) The person must have incurred guilt before he left the demanding state and while he was bodily present within that state. State v. Hale, 157 Me. 361, 368, 172 A.2d 631, 635 (1961).

Although it is unnecessary to establish in the asylum state the commission of the crime charged, it is necessary to prove the flight of the petitioner, for without such proof a person cannot be extradited as a fugitive. Ex parte King, supra,

at 207-208, 28 A.2d at 564-565. (Note, however, that flight need not be established when extradition is not based on the petitioner's status as a fugitive. 15 M.R.S.A. §§203 and 206.) Flight denotes action, movement from one place to another, and in extradition proceedings the flight must take place subsequent to the commission of the crime alleged or subsequent to the overt act in the demanding state in those situations where acts outside the demanding state complete the offense. Ex parte King, supra, at 208, 28 A.2d at 565; Burke v. State, supra, at 493.

It is not necessary to prove that the petitioner left the demanding state after an indictment was found against him, or that he left in order to avoid prosecution. Poulin v. Bonenfant, 251 A.2d 436, 439 (Me. 1969). Even if his presence in the asylum state is involuntary, if the petitioner refuses to return to the demanding state, he can be a "fugitive." Evans v. Rosenberger, 181 N.W.2d 152, 155 (Iowa 1970).

The acts constituting the offense purportedly committed by the accused need not be completely accomplished within the demanding state. A person may be subject to extradition as a fugitive if he does an overt act in the demanding state which is, and which is intended to be, a material step towards accomplishing the crime, and then absents himself from that state, and completes the offense elsewhere, even though he is not

present in the demanding state when the offense is committed there. Burke v. State, 265 A.2d 489, 493 (Me. 1970). Furthermore, under a special provision of the U.C.E.A. an individual may be extradited, though not a fugitive, if he committed an act in the asylum state or in a third state intentionally resulting in a crime in the demanding state. 15 M.R.S.A. §206.

The existence of a rendition warrant, regular and sufficient on its face, establishes a presumption as to the jurisdictional facts necessary to its issuance (including fugitive status), and the burden of disputing the necessary conditions for extradition rests upon the petitioner. Poulin v. Bonenfant, supra, at 438.

Recital in the governor's warrant that the petitioner is a fugitive from justice in the demanding state is sufficient to raise the presumption that the petitioner was present in the demanding state. Luker v. Koch, 489 P.2d 191, 192 (Colo. 1971). Thus, the burden is upon the petitioner to show by "clear and satisfactory" evidence that he was not present in the demanding state at the time the offense was committed if he is to overcome the presumption. Eathorne v. Nelson, 505 P.2d 1, 4 (Colo. 1973). Where there is merely contradictory evidence the petitioner will not be discharged. Id.

The state need not produce oral testimony to contradict the positive testimony of the petitioner that he was not present in the demanding state. The rendition warrant plus the supporting affidavits suffice for this purpose. Hill v. Houck, 195 N.W.2d 692, 697 (Iowa 1972). The rationale usually given for allowing such hearsay evidence is that in extradition proceedings it is often impractical to transport the witnesses from the demanding to the asylum state to have their testimony in person. Id. However, where the state does not present the supporting affidavits and the petitioner's unchallenged evidence denies existence of such jurisdictional facts as the existence of a written demand for the petitioner's extradition and the presence of the petitioner in the demanding state, it has been held that these facts may not be presumed from the face of the governor's warrant but that the state must refute the petitioner's claim by producing the extradition requisition and supporting papers. Hughes v. Waters, 204 N.W.2d 599 (Iowa 1973).

At least one state has held that where the petitioner unequivocally denies that he was present in the demanding state at the time of the alleged offense, the presumption of validity accorded a rendition warrant of the asylum state is not enough, in itself, to overcome such denial and that it is incumbent upon the demanding state to produce some credible evidence to rebut the denial. State ex rel Wagner v. Hedman, 195 N.W.2d 420, 422-

423 (Minn. 1972). However, this view has been expressly rejected in other jurisdictions. See Hill v. Houck, *supra*, at 697-698 and cases cited therein. Even under the minority view only a minimum of evidence from the demanding state is needed to overcome the petitioner's unequivocal denial of presence in the demanding state at the time of the alleged offense. State ex rel. Wagner v. Hedman, *supra*, at 423.

2. Identity

Because the habeas corpus proceeding is not intended to accomplish a determination of the petitioner's guilt or innocence, but is only summary in nature, evidence presented by the state for identification purposes is not subjected to the stringent standards applied in a trial on the merits. Eathorne v. Nelson, *supra*, at 3; Solomon v. Warden, 256 Md. 297, 260 A.2d 68, 70 (1969). Thus, affidavits from complaining witnesses, hearsay testimony, admissions and photographs of the accused may be admitted. See, *e.g.*, United States v. Flood, 374 F.2d 554 (2nd Cir. 1967). Moreover, the constitutional principles of Miranda and its progeny are inapplicable to identification testimony in the habeas corpus proceeding. Id. at 558; Eathorne v. Nelson, *supra*, at 3.

Fingerprints and handwriting samples may help establish identity without incurring the expense of transporting an identifying witness to the asylum state. Evidence of the identity of name, birthplace, and father's given name, as between the

petitioner and the person named in the requisition papers, may also support identification. In re Extradition of D'Amico, 177 F.Supp. 648, 652 (S.D.N.Y. 1959).

In the absence of identity of names, no presumption of validity attaches from the warrant as to the governor's determination of identification. However, where identity of names is present such a presumption does arise, and the burden then shifts to the petitioner to produce evidence to rebut the presumption. Ex parte Bowman, 480 S.W.2d 675, 677 (Tex. Cr. App. 1972).

A purely fictitious name in the demanding state's indictment (e.g., "John Doe"), without other identifying characteristics, is insufficient to support extradition. Lee Gim Bor v. Ferrari, 55 F.2d 86, 89 (1st Cir. 1932). However, where the indictment refers only to petitioner's alias and the requisition warrant refers to the petitioner both by his real name and his alias, or where the name is misspelled in the warrant, extradition will not be defeated provided there is sufficient other evidence to identify the petitioner as the person charged. Poulin v. Bonenfant, 251 A.2d 436, 439-440 (Me. 1969). But where there exists a variance in names, due to a misspelling, typographical error or the like, it becomes the state's burden to establish by credible evidence that the petitioner is the person sought. Salvail v. Sharkey, 271 A.2d 814, 816 (R.I. 1970).

F. Detainers

Where criminal prosecution has been instituted against a person under the law of this State, and where the extradition of the same person is sought by another state, the Governor may either surrender him on the demand of the executive authority of the other state or hold him until tried and discharged or convicted and punished in this State. 15 M.R.S.A. §219. However, in Klopfer v. North Carolina, 386 U.S. 213, 87 S.Ct. 988, 18 L.Ed. 2d (1966) and Smith v. Hooey, 393 U.S. 374, 89 S.Ct. 575, 21 L.Ed.2d 607 (1968), the United States Supreme Court has made applicable to the states the Sixth Amendment's requirement of a speedy trial. Consequently, such trial should be had, or the charge dismissed, within 180 days of any request for trial by the person accused.

15 M.R.S.A. §205 allows the Governor of this State to make an agreement with the executive authority of any other state whereby a person charged with crime in this State, who is imprisoned or held under criminal proceedings then pending against him in the other state, may be extradited to this State subject to his being returned upon conclusion of prosecution or termination of imprisonment in this State.

In 1971 Maine enacted the Interstate Compact on Detainers to deal with the problem of securing speedy trials for prisoners incarcerated in other jurisdictions. 34 M.R.S.A. §1411 et seq.

The compact permits a prisoner to request a trial in a jurisdiction other than that in which he is being confined on charges, indictments, informations and complaints lodged against him. The trial is to be had within 180 days of the receipt by the appropriate prosecuting officer of the prisoner's request for final disposition of the charges against him. Such request is deemed to be a waiver of extradition by the prisoner so that he may be brought to trial in the appropriate state and may be transferred to that state to serve any sentence imposed after the completion of his sentence in the state where he was incarcerated prior to his request for disposition of the other charges against him.

The compact also allows the appropriate Maine prosecutor to request a temporary transfer of custody of a person incarcerated in a signatory state for the purpose of providing a trial on charges pending in this State. Such request must be in writing and must be addressed to the appropriate authorities of the state in which the prisoner is incarcerated. This request must be approved, recorded and transmitted to the state having custody of the prisoner by the court in this State which has jurisdiction to try the pending case. The compact provides for a period of 30 days after receipt of the request for transfer in which the governor of the sending state may disapprove of the transfer, either at his own, or on the prisoner's motion. Once a prisoner is transferred into the temporary custody of this State, trial must be had on the pending charges within 120 days of the prisoner's arrival, except where good cause exists for the grant of a reasonable and

necessary continuance. If a trial is not had on the pending charge prior to the prisoner's return to his original place of confinement, the charge will be dismissed with prejudice. If the prisoner is found guilty, the sending state will provide a certificate containing all information pertinent to sentencing, such as the term of sentence and accumulated good time. Upon termination of trial in this State, the prisoner is to be returned to the sending state.

IV. ADDITIONAL MATTERS

A. Extraditable Offenses

The constitutional provision authorizes extradition for "treason, felony, or other crime." Identical language appears in 18 U.S.C. §3182 and in 15 M.R.S.A. §202. Thus, a fugitive may be extradited for any offense made punishable by the law of the demanding state, including misdemeanors. It is irrelevant whether the offense charged is also a criminal offense in the asylum state. Kentucky v. Dennison, 65 U.S. (24 Howard) 66, 16 L.Ed. 717. (1861).

B. Extradited Persons Exempt from Civil Process

Extradited persons are exempt from the service of civil process. No person brought into Maine on extradition based on a criminal charge shall be subject to personal service in civil actions arising out of the same facts as the criminal charge, until such person 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. 15 M.R.S.A. §225.

C. Expenses for Return of Fugitives

Although 15 M.R.S.A. §224 provides that if the crime for which the person sought is punishable by confinement in the State Prison, the expenses of the extradition are to be paid by the State, no appropriation for such expenses has ever been made.

It is at best unclear whether the Governor and Council would reimburse a county for such expenses. It is therefore likely that in practice all extradition expenses will fall upon the county in which the crime was alleged to have been committed.

D. Prisoner Confined in Jail

A person executing the Governor's warrant of arrest or an authorized agent of the demanding state may confine his prisoner in the jail of any city or county through which he may pass. The expense of safekeeping shall be chargeable to the person transporting the prisoner. 15 M.R.S.A. §212.

E. No Waiver by this State

The State of Maine shall not be deemed to have waived any of its rights, privileges or jurisdiction in any way whatsoever by the enactment of the U.C.E.A. 15 M.R.S.A. §227.

APPENDIX

APPENDIX I

TABLE OF JURISDICTIONS WHICH HAVE ENACTED THE UNIFORM CRIMINAL EXTRADITION ACT.

<u>Jurisdiction</u>	<u>Statutory Citation</u>
Alabama	Code of Ala., Tit. 15, §§48-67, 69-74.
Alaska	AS 12.70.010 to 12.70.290.
Arizona	A.R.S. §§13-1301 to 13-1328.
Arkansas	Ark. Stats. §§43-3001 to 43-3028.
California	West's Ann. Pen. Code, §§1548 to 1556.2.
Colorado	C.R.S. '63 60-1-1 to 60-1-33.
Connecticut	C.G.S.A. §§54-157 to 54-185.
Delaware	11 Del.C. §§2501 to 2530.
Florida	F.S.A. §§941.01 to 941.30.
Georgia	Code, §§44-401 to 44-429.
Hawaii	R.L.H. 1955, §§250-1 to 250-27.
Idaho	I.C. §§19-4501 to 19-4527.
Illinois	S.H.A. ch. 60, §§18-49.
Indiana	I.C. 1971, §§35-4-3-1 to 35-4-3-31.
Iowa	I.C.A. §§759.1 to 759.29.
Kansas	K.S.A. 62-727 to 62-757.
Kentucky	KRS 440.140 to 440.420.
Maine	15 M.R.S.A. §201 et seq.
Maryland	Code 1957, art. 41, §§16-43.
Massachusetts	M.G.L.A., c. 276, §11-20R.
Michigan	M.C.L.A. §§780.1-780.31.
Minnesota	M.S.A. §§629.01 to 629.29.
Missouri	V.A.M.S. §§548.011 to 548.300.
Montana	R.C.M. 1947, §§94-501-1 to 94-501-32.
Nebraska	R.R.S. 1943, §§29-729 to 29-758.
New Hampshire	RSA 612:1 to 612:30.
New Jersey	N.J.S.A. 2A:160-6 to 2A:160-35.
New Mexico	1953 Comp. §§41-19-1 to 41-19-30.
New York	McKinney's CPL §§570.02 to 570.66.
North Carolina	G.S. §§15-55 to 15-84.
Ohio	R.C. §§2963.01 to 2963.29.
Oklahoma	22 Okl. St. Ann. §§1141.1 to 1141.30.
Oregon	ORS 147.010 to 147.280.
Panama Canal Zone	6 C.Z.C. §§5021 to 5050.
Pennsylvania	19 P.S. §§191.1 to 191.31.
Rhode Island	Gen. Laws 1956, §§12-9-1 to 12-9-35.
South Dakota	SDC 34.1701 et seq.
Tennessee	T.C.A. §§40-1001 to 40-1034.
Texas	Vernon's Ann. C.C.P. art. 51.13.
Utah	U.C.A. 1953, 77-56-1 to 77-56-28.
Vermont	13 V.S.A. §§4941 to 4969.
Virgin Islands	5 V.I.C. §§3801 to 3829.
Virginia	Code 1950, 19.1-49 to 19.1-80.
Washington	RCWA 10.88.200 to 10.88.930.
West Virginia	Code, §§5-1-7 to 5-1-13
Wisconsin	W.S.A. 976.03.
Wyoming	W.S. 1957, §§7-27 to 7-53.

APPENDIX II

NUMBER OF COPIES REQUIRED BY STATES

ALABAMA	Original and one copy
ALASKA	Original and one copy
ARIZONA	Original copy
ARKANSAS	Original copy
CALIFORNIA	Original
COLORADO	Original
CONNECTICUT	Original and one copy
DELAWARE	Original and 2 copies
DISTRICT OF COLUMBIA	Original and one copy
FLORIDA	Original and one copy
GEORGIA	Original and one copy
HAWAII	Original
IDAHO	Original and one copy
ILLINOIS	Original and one copy
INDIANA	Original and 2 copies
IOWA	Original
KANSAS	Original and one copy
KENTUCKY	Original
LOUISIANA	Original and one copy
MAINE	Original and one copy
MARYLAND	Original and one copy
MASSACHUSETTS	Original copy
MICHIGAN	Original and one copy

MINNESOTA	Original and 2 copies
MISSISSIPPI	Original copy
MISSOURI	Original copy
MONTANA	Original and one copy
NEBRASKA	Original copy
NEVADA	Original and one copy
NEW HAMPSHIRE	Original and 3 copies
NEW JERSEY	Original and one copy
NEW MEXICO	Original and one copy
NEW YORK	Original and one copy
NORTH CAROLINA	Original and 2 copies
NORTH DAKOTA	Original and 2 copies
OHIO	Original and one copy
OKLAHOMA	Original and one copy
OREGON	Original
PENNSYLVANIA	Original and 2 copies
RHODE ISLAND	Original and 2 copies
SOUTH CAROLINA	Original and one copy
SOUTH DAKOTA	Original and one copy
TENNESSEE	Original and one copy
TEXAS	Original and one copy
UTAH	Original copy
VERMONT	Original and 2 copies

VIRGINIA	Original
WASHINGTON	Original copy
WEST VIRGINIA	Original and one copy
WISCONSIN	Original
WYOMING	Original and 3 copies
UNITED STATES DEPARTMENT OF STATE	Original and 2 copies
UNITED STATES DEPARTMENT OF JUSTICE	Original and 5 copies
FEDERAL AGENCIES	Original and one copy

APPENDIX III

LIST OF STATES HAVING AGREEMENT ON DETAINERS

ARIZONA	NEBRASKA
ARKANSAS	NEVADA
CALIFORNIA	NEW HAMPSHIRE
COLORADO	NEW JERSEY
CONNECTICUT	NEW MEXICO
DELAWARE	NEW YORK
DISTRICT OF COLUMBIA	NORTH CAROLINA
GEORGIA	NORTH DAKOTA
HAWAII	OHIO
IDAHO	OREGON
ILLINOIS	PENNSYLVANIA
IOWA	SOUTH CAROLINA
KANSAS	TENNESSEE
MAINE	UTAH
MARYLAND	VERMONT
MASSACHUSETTS	VIRGINIA
MICHIGAN	WASHINGTON
MINNESOTA	WEST VIRGINIA
MISSOURI	WISCONSIN
MONTANA	WYOMING

APPENDIX IV

MEMORANDUM ON THE PREPARATION AND HANDLING OF
APPLICATIONS FOR THE EXTRADITION OF FUGITIVES
FROM JUSTICE LOCATED ABROAD

DEPARTMENT OF STATE
Washington, May 1972

I

The Extradition of a fugitive located abroad pursuant to treaty should be requested only by the Department of State. Extradition will be sought only from a Government with which the United States has an extradition treaty, and only in accordance with the provisions of that treaty. The countries with which the United States has extradition treaties and the citations of those treaties are listed in a note to Title 18 of the United States Code, Section 3181, and are updated in the supplements.

All applications for requisitions [a request for extradition] should be addressed to the Secretary of State, accompanied by the necessary papers as herein stated. When extradition is sought for an offense within the jurisdiction of a state or other local court, the application must come from the governor of the State, Commonwealth or Territory. When the offense is against the United States, the application must come from the United States Department of Justice.

In every application for a requisition it must be made to appear that one of the offenses enumerated in the extradition treaty between the United States and the Government from which extradition is sought has been committed within the jurisdiction of the United States or of some one of the States or Territories, and that the person charged therewith has been found, or is believed to be located, within the territory of such foreign government or one of its dependent territories to which the treaty applies.

The extradition treaties of the United States ordinarily provide that the surrender of a fugitive shall be granted only upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her commitment for trial if the crime or offense has been there committed.

II

The Application

The application for the extradition of a fugitive should state his full name, if known, and his alias, if any, the offense or offenses in the language of the treaty for which his extradition is sought and the full name of the person or persons proposed for designation to receive and convey the prisoner to the United States. It should also contain a statement to the effect that it is made solely for the purpose of bringing about the trial and punishment of the fugitive, and not for any private purpose, and that if the application is granted, the criminal proceedings will not be used

for any private purpose.

Three sets of all papers herein required in support of an extradition request must be supplied to the Department of State. One set will be retained in the files of the Department of State. The original set, duly authenticated by the Secretary of State, will be transmitted with an appropriate instruction to the appropriate American embassy or consulate in the foreign country for ultimate use in the presentation of the request by the prosecuting authority or foreign attorney representing the State or Territory. The third set is submitted by the Embassy for the use of the Ministry of Foreign Affairs.

The requesting state should indicate in its application that it is prepared to pay the expense of the extradition.

The practice of some countries with which the United States has treaties requires that in order for copies of depositions to be received in evidence, the party producing them must declare under oath that they are true copies of the original depositions. It is desirable, therefore, that they be certified as true copies. When original signed depositions are forwarded in all three sets, such a declaration is not required.

Extradition of Person Charged with Crime

If the person whose extradition is sought has not been convicted of, but is merely charged with a crime, at least the following documents should be submitted:

1. A duly certified and authenticated copy of the indictment or warrant of arrest or order of detention issued by a judge or other judicial officer.

2. Certified and authenticated depositions or affidavits on the basis of which such warrant or order may have been issued. It is considered preferable that these include the depositions or affidavits of private individuals, if possible, in addition to those of police and other law enforcement officials.

Such depositions should contain:

a) a precise statement of the criminal act or acts with which the person sought is charged;

b) the date and place of the commission of the criminal act;

c) statements by witnesses which would be used to establish the commission of a crime.

Mexico requires, in cases of murder, a certified copy of the coroner's report or other medical report to prove the existence of a corpus delicti.

3. An authenticated copy of the texts of applicable laws including:

a) the law defining the offense;

b) the law prescribing the punishment for the offense;

c) the law relating to the limitation of the legal proceedings or the enforcement of the penalty for the offense; and

d) the affidavit or deposition of a practicing attorney that the laws were in effect when the crime was committed.

4. Data necessary to establish identity of the fugitive. Preferably such data will include a fingerprint record, photographs or affidavits describing the fugitive and distinguishing physical marks. Photographs should be permanently attached to affidavits by one or more identifying persons who have also signed the photographs on the back.

Extradition of Convicted Fugitive

If the person whose extradition is sought has been convicted of a crime or offense, and escaped thereafter, the following should be supplied:

1. Certified copy of the judgment of conviction and sentence passed against the fugitive. If the person sought was convicted, but sentence has not yet been passed, an affidavit should explain how this is possible under State criminal procedure and the proceedings the person sought faces upon his return in extradition. In any event, the prosecuting attorney should furnish in affidavit form a short narrative statement of the essential facts of the offense or offenses that satisfy the elements of the offense as defined in the applicable law.

2. Data necessary to establish identity.

3. Texts of applicable laws as in 3 above.

4. If punishment has been imposed, an affidavit describing the extent to which the punishment has not been carried out.

Multiple Offenses

If the extradition of the fugitive is sought for several offenses, copies of the several convictions, indictments, or informations and of the documents in support of each should be furnished. Extradition requests should be limited to offenses listed in the appropriate treaty.

Provisional Arrest

Requests for provisional arrest (in advance of presentation of the formal documents) will be entertained by the Department of State. States or Territories making such requests should (a) describe the fugitive; (b) indicate his precise location in the asylum country; (c) enumerate the treaty offense with which he is charged; (d) describe the circumstances of the crime as fully as possible, including the date and place of the crime; (e) state the date and place of the issuance of the warrant of arrest or judgment of conviction, and the name of the issuing judge and court; and (f) describe the circumstances of urgency which led to the request for provisional arrest, e.g. the fugitive has a pattern of moving quickly and without warning.

Certification/Authentication

All papers constituting the evidence supporting an extradition request, transmitted as herein required, including the record of conviction, the indictment or information, and the warrant of arrest, must be duly certified and then authenticated under the great seal of the State or of the Secretary of State of the State

making the application, or the seal of the Federal Department of Justice, as the case may be. The Department of State can only authenticate the seal of the State or of its Secretary of State, or of the Department of Justice. For example, if a deposition is made before a judge or justice of the peace, the official character of the justice and his authority to administer oaths should be attested to by the county clerk or other superior certifying officer; the certificate of the county clerk should be authenticated by the State Governor or Secretary of State under the seal of the State or of its Secretary of State, and such seal will be authenticated by the Department of State. If there is but one authentication, it should plainly cover all the papers and be attached to them.

Representation

Should the treaty not provide that the legal officers of the requested State shall assist the requesting State before the requested State's judges and magistrates, it may be necessary for the U.S. State seeking extradition to hire a private attorney in the requested State to represent the United States government on its behalf. The Department of State can seek to supply names, addresses and fee estimates of foreign attorneys in the area where the fugitive is found or believed to be located.

Translations

If the official language of the country from which extradition is to be requested is other than English, translations of all the documents may have to be prepared. This matter should be discussed with the office of the Department of State referred to below.

Expenses of Extradition

States or Territories applying for requisitions will be required to pay all expenses attending the apprehension and delivery of the fugitive, whether or not the extradition is granted (certain services of the Department of State and its diplomatic or consular officers are provided without cost). These expenses will vary depending on the treaty but may include translation of the documents; the services of foreign attorneys who will represent the United States government on behalf of the requesting State or Territory; the court and reporters' costs; the food and lodging of the person sought while he is in custody during the extradition proceedings; the travel expenses of the agent or agents to receive the fugitive; and transportation of the fugitive back to the State or Territory.

Return of Fugitive

The Secretary of State, pursuant to E.O. 11517, has been authorized to issue the warrant authorizing the agents, who have

been designated by the requesting U.S. State or the competent Federal Agency, to take custody abroad of the person sought and return him to the United States. Such a warrant is required for those agents to be able to establish their authority to the State granting extradition and to Federal and State authorities in the United States en route to the jurisdiction that requested extradition. If the offense charged is a violation of the law of a State or Territory, the agent authorized by the Secretary of State to receive the fugitive will be required to deliver him to the authorities of such State or Territory. If the offense charged is a violation of a law of the United States, the agent will be required to deliver the fugitive to the proper authorities of the United States for the judicial district having jurisdiction of the offense.

III

Care should be taken to observe the provisions of the particular treaty under which extradition is sought, and to comply with any special provisions contained therein. Copies of particular treaties will be furnished by the Department of State upon application.

Strict compliance with the requirements set forth above may save much delay and expense to the party seeking the extradition of a fugitive criminal.

Officers contemplating the extradition of a fugitive located abroad are encouraged to write or telephone for advice to the

Office of the Assistant Legal Adviser for Management and Consular Affairs, Department of State, Washington, D.C. 20520 (phone: (202) 632-3022 or (202) 632-2672).

IV

Once the Department of State through an embassy or consulate has requested the cooperation of a foreign State pursuant to an extradition treaty, a request originating in a State of the United States becomes an official foreign relations matter of the United States. The Department of State thus must be kept informed of all developments affecting a pending extradition request.

Withdrawal of Request or Voluntary Return of Fugitive

If the requesting State of the United States for any reason wishes to withdraw its extradition request, the Office of the Governor should immediately so notify the Department of State, so that if withdrawal of the extradition request is deemed possible the requested foreign State can be informed that the United States is withdrawing its extradition request.

If the person sought agrees to waive extradition or voluntarily to return to the United States, the requesting State of the United States should immediately notify the Department of State. The Department will thereupon seek to have its Embassy confirm the intention of the person sought, and will explore the legal possibilities, if any, under the law of the requested State for the voluntary return of the fugitive in a manner most likely to

preclude his escape. It is possible in some foreign States for the U.S. extradition request to be withdrawn with effect only as of the time the person sought departs that country on a non-stop, direct flight on a U.S. carrier bound for the United States. When such return is possible, the Department believes that due precautions must be taken to ensure the safety of the plane, passengers and crew by means of escort officers.