

SUMMARY OF UNIFORM CRIMINAL EXTRADITION ACT

I. LAW OF EXTRADITION:

- A. The Extradition Clause – derived from Article IV, § 2, cl. 2 of the U.S. 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 crime.”
- B. Implemented by the Federal Extradition Act.
1. The Federal Extradition Act provides that upon proper demand by one governor to another to deliver up a person who has fled from the first governor’s state, the governor of the state to which the person has fled shall do so. 18 U.S.C. §§ 3181-3195.
 2. The procedural requirements are:
 - a. A demand by the governor of the demanding state;
 - b. Production of an indictment or of an affidavit made before a magistrate of the state;
 - c. Evidence within the charging document that the person is charged with a crime in the demanding state; and
 - d. Authentication of the charging documents by the governor of the sending state.
 3. Application of the federal law:
 - a. Applies between states or between territories and states, but not between states and the federal government or another nation.
 - b. Applies to all crimes, including misdemeanors.
 - c. Does not apply to non-fugitives or to those being sought after conviction of a crime.
 - d. Sets out maximum standards. States may adopt less stringent standards, but may not require more than the federal act requires.
 - e. States may provide for extradition in circumstances that are not governed by the federal law.
- C. Further implemented by the Uniform Criminal Extradition Act (UCEA).
1. The Commission on Uniform State Laws passed the Uniform Criminal Extradition Act in 1936 in an effort to promote uniformity in extradition law, and end the many differing requirements states had added to the federal law.
 2. The UCEA expressly provides for extradition in circumstances not covered by the federal act, such as the extradition of (1) convicted persons who escape confinement, or violate their probation or parole; and (2) “non-fugitives,” i.e. persons who were not personally present in the demanding state, but committed acts resulting in a crime in that state.
 3. It expands upon the types of charging documents that may be accepted by an asylum state. In addition to an indictment or an affidavit made before a magistrate, states may extradite on an information supported by affidavit or a judgment of conviction.

4. It establishes procedures for rendition of persons, including arraignment and the opportunity to test the validity of the arrest in a petition for writ of habeas corpus.
5. It establishes procedures and time-frames for detention of a person being extradited.
6. Currently, 47 states, Puerto Rico, the Virgin Islands, and the Panama Canal Zone have adopted the UCEA. Only Mississippi, North Dakota, South Carolina and Guam have not.

II. 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.
- **Asylum state** is where the person has taken refuge or is found.
- **Demanding state** is the state which seeks to extradite the person.
- **Governor/executive authority** refers to any person performing the functions of the Governor under state law.
- **Fugitive** is an individual who commits a crime while physically present in the demanding state who then flee that state.
- **Application for Requisition** is the formal written request from the prosecutor to the Governor of the demanding state for a requisition upon the Governor of the asylum state for the return of a person.
- **Requisition** is the formal demand made by the Governor of the demanding state upon the Governor of the asylum state and upon which the Governor's Warrant is based.
- **Fugitive complaint** is the document filed in the asylum state prior to receipt of the Governor's Warrant charging the person arrested with being a fugitive from justice.
- **Fugitive warrant** is the arrest warrant issued by the asylum state court prior to receipt of the Governor's Warrant authorizing the arrest and detention of the person pending receipt of the Governor's Warrant.
- **Governor's Warrant** is the warrant issued by the Governor of the asylum state commanding that the person be arrested and delivered over to designated agents of the demanding state.
- **Waiver of extradition** is a relinquishment by the accused of his or her right to demand issuance and service of a Governor's Warrant and consent to be transported to the demanding state.

III. EXTRADITABLE PERSONS:

- A. Fugitives from justice – those who commit a crime while physically present in the demanding state who then flee that state.
- B. Persons who leave the state involuntarily (i.e. prior extradition). While not technically fugitives, the UCEA treats them as such for purposes of extradition.
- C. Non-fugitives – persons who intentionally commit crimes against the demanding state through acts done outside that state (i.e. internet crimes, cases involving bad checks, criminal non-support, telemarketing, etc.).
- D. **Note:** Misdemeanor crimes are subject to extradition, but demanding states should consider whether it is worth the expense to extradite based on such crimes.

IV. LOCATION AND INITIAL ARREST:

- A. Law enforcement officers may arrest on a Fugitive Warrant for any crime – felony or misdemeanor.
- B. The person should be taken without unnecessary delay before a judge or a magistrate who should advise the person that he or she is being held as a fugitive from another state and advise the person of his or her rights under the UCEA.
- C. If the person waives extradition, the appropriate authorities in the other state should be notified immediately and arrangements made to return the person.
- D. If the judge determines that it appears the person is the individual wanted in the other state but the person refuses to waive extradition, the magistrate should commit the person to jail for a specified period of time sufficient to allow the processing and service of a Governor’s Warrant upon the person.
 - 1. In most states this period is 30 days, and may be extended for an additional 60 days. Be aware that some states have shortened this time period. Others provide for a “reasonable” time, generally deemed to be 30 days.
 - 2. Unless the offense is one punishable in the other state by death or life imprisonment, bail may be set during this period.
 - 3. The authorities in the demanding state should be notified to start formal extradition proceedings.
 - 4. If the person has not been arrested on the Governor’s Warrant by the expiration of the time fixed by the judge, then the judge may discharge the person, recommit the person to jail, or set new bail.

V. PROCEDURES FOR HANDLING FORMAL EXTRADITIONS:

Pursuant to the UCEA, as adopted in Nevada as NRS 179.177-179.235, there are three situations which can occur regarding the return of a person to a “demanding” state: (A) the State of Nevada requests the extradition of a person charged or convicted with a crime who has left the state; (B) the State of Nevada is the asylum state, and a sister state requests the extradition of a person charged or convicted with a crime in that state; and (C) resolving extradition requests from or with non-signatory states.

These matters are handled as described below.

- A. Nevada is the Demanding State – Whenever a prosecutor makes a determination to seek the return of a person who is accused or convicted of a crime in a county of Nevada who has been located in another state and has refused to waive extradition, the Nevada prosecutor prepares an Application for Requisition and submits the application and supporting documents in quadruple to the extradition officer in the Nevada Attorney General’s Office. NRS 179.181.

The written Application for Requisition must include the following:

- 1. The name of the person charged and any known aliases;
- 2. The crime(s) charged;
- 3. The state where the person has taken refuge (asylum state);
- 4. A written description of the person, including any identifying marks, scars,

- tattoos, social security number and, if possible, FBI number;
5. A certification from the prosecutor that justice requires the return and that the proceeding is not instituted to enforce a private claim;
 6. A statement to the effect that the person has been arrested and has refused to waive extradition, including the name of the law enforcement agency that arrested the person;
 7. Date, place and circumstances of the crime(s);
 8. The statute(s) that defines the crime for which the person is charged and note that a copy of the applicable statute(s) is attached;
 9. List the charging and supporting documents;
 10. Name of the proposed agent to return the person;
 11. Verification by affidavit;
 12. In the case of a convicted person who has escaped or violated bail, probation or parole, also include a statement explaining circumstances of the escape or breach of terms of supervision must be included (NRS 179.223(2)); and
 13. A statement, if applicable, that the person previously pled guilty and subsequently failed to appear for sentencing.

The application must have the following attachments:

1. Copy of the statute(s) that have been violated.
2. Four certified copies of the charging document, which may be an indictment, information and supporting affidavit, complaint signed before a magistrate or judge, or judgment of conviction.

The documents presented to the magistrate must substantially charge the person demanded with having committed a crime under the laws of that state. The documents must be authenticated by the executive authority making the demand. NRS 179.183.

If the charging document is a complaint, it must be sworn to before a magistrate or judge. Although some jurisdictions have complaints sworn to before notaries, these do not comply with requirements of the UCEA. NRS 179.177. If not so sworn, the complaint must be amended and sworn before a magistrate or judge.

However some counting, including **Clark County**, use the affidavit of the prosecutor sworn before a magistrate incorporating the complaint and warrant.

An affidavit of probable cause should accompany all Applications for Requisition, whether the charging document is a complaint, information, or indictment. When the charging document is an information, the affidavit should be sworn before a district court judge. Affidavits accompanying complaints and indictments may be made before a notary public. The affidavit may be sworn to by an eyewitness or investigating officer and must contain the underlying facts of the crime, not just the bare conclusory language or the statute violated.

If the affidavit is made by an investigating officer, they should set forth the sources of all information.

3. Warrant. If the charging document is a complaint amended to be sworn before a magistrate, it will be necessary to obtain either an amended warrant or a statement added to the original warrant stating it is reissued as a result of amending the complaint for extradition.

In Clark County this is accomplished by incorporating the original warrant in the affidavit sworn before a magistrate as explained above.

4. Fingerprint card and/or photograph.
Note: If the only photograph available is supplied by the asylum agency, the demanding state must include an affidavit of identity.
5. If the person previously pled guilty and subsequently failed to appear for sentencing, to support the statement added to the application, either a certified copy of the transcript of the entry of the guilty plea or the minute order showing the acceptance of the guilty plea must be attached with any bench warrant.
6. Authentication. The package must contain a certification from the judge and clerk attesting to the authenticity of the records and the signatures.

The demanding state extradition officer reviews the application package. If a document is missing or inadequate, the officer communicates with the prosecutor requesting the proper documentation. Once the extradition officer determines the package is complete, it is sent to the deputy attorney general handling the extradition requests, who reviews the documentation and gives the final approval or, if necessary, sends back the request for failing to meet the statutory requirements.

Once the deputy approves the application, the package is sent back to the extradition officer, who prepares the Requisition and Agent's Appointment for the Governor's signature. The extradition officer also obtains the Secretary of State's signature and state seal on the Requisition and Agent's Appointment. The extradition officer assembles the extradition package, including the application, supporting documents, and Requisition and Agent's Appointment, and forwards the package with the appropriate number of copies to the asylum state. A copy of the final application with the extradition package must also be filed in the Office of the Secretary of State. NRS 179.223(3).

The extradition officer of the asylum state repeats the review process, including review by the assigned deputy attorney general. Upon approval of the extradition package, the extradition officer sends the package to the governor along with a Governor's Warrant.

As soon as the Governor's Warrant is returned to the extradition officer, the officer will arrange to have the Governor's Warrant served on the person or, if the person is not under arrest, to a peace officer for execution.

Note: The person is no longer entitled to bail once served/arrested on the Governor's Warrant. NRS 179.209.

The Governor's Warrant authorizes a peace officer or other person to whom directed to arrest the accused. NRS 179.193. The Governor's Warrant supersedes all prior arrest warrants and stops the running of the 30/60-day statutory period.

The person arrested upon such warrant is taken before a judge in the asylum state. The person is informed of the demand for his or her surrender and the crime(s) with which they are charged. The person may waive extradition or may choose to test the legality of the arrest by filing a petition for writ of habeas corpus. NRS 179.197.

If the person refuses to waive extradition, the court will fix a reasonable time, usually 30 days, to allow the accused to file a petition. Upon the filing of the petition, notice is given to the prosecuting attorney of the county in which the arrest is made and in which the accused is in custody, and to the agent of the demanding state. An asylum state court may only consider: (1) whether the extradition papers are in order; (2) whether the person is substantially charged with a crime in the demanding state; (3) whether the person is the person sought by the demanding state (i.e. identity); and (4) whether the person was properly labeled a fugitive or non-fugitive. *Michigan v. Doran*, 439 U.S. 282 (1978). The issuance of a Governor's Warrant creates a prima facie case that the extradition is proper. Thus, the burden of proof to show otherwise is on the person. The standard of proof is beyond a reasonable doubt. The person may appeal a denial of habeas corpus relief. An appeal is an automatic stay if (1) the notice of appeal is filed within 5 days of the order, or (2) upon the filing of the notice of appeal. NRS 34.560. Otherwise, the person must obtain a stay from a court.

The asylum extradition officer will inform the demanding state extradition officer to arrange for pickup of the person if (1) the person waives extradition or (2) after the court denies his petition.

Note: If extradition papers do not arrive in time (i.e. after the expiration of the 30/60-day period), they are still valid. Once the asylum state governor issues the Governor's Warrant, the person can be re-arrested on that warrant (if their location is known).

- B. Nevada is the Asylum State – The procedure when Nevada is the asylum state is identical to the procedure followed in section A above.
- C. Resolving Extradition Requests from or With Non-Signatory States – Mississippi, North Dakota, South Carolina and Guam have not adopted the UCEA. Nevertheless, whenever a request for extradition is made to or from the above-

mentioned states, the procedures required under the UCEA are followed by the demanding and the asylum states. The non-signatory state, however, may request additional documents not otherwise provided for in the UCEA.

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