

**An Extradition  
Process Overview**

May 19, 2024  
Milwaukee, Wisconsin

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**Extradition  
v. IAD**

<b>Extradition</b>	<b>IAD</b>
<ul style="list-style-type: none"><li>• Permanent transfer</li><li>• Arrestee in county jail</li><li>• Paperwork</li><li>• Untried charges, conviction or violations</li><li>• Impact of time constraints:<ul style="list-style-type: none"><li>• Released from custody</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Temporary transfer</li><li>• Inmate in prison</li><li>• Forms</li><li>• Untried charges only</li><li>• Impact of time constraints:<ul style="list-style-type: none"><li>• Charges dismissed with prejudice</li></ul></li></ul>

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**EXTRADITION  
PROCESS**

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What is an extradition?

An extradition is the **surrendering** of the **custody** of an accused from one state or country to another state or country to place the accused on trial or to carry out a punishment.

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Definitions

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Definitions – States

- **Asylum State:**
  - Where wanted person is currently located
- **Demanding State:**
  - State which seeks to extradite person

Example – Person located in Wisconsin and wanted in Nevada  
Asylum State – Wisconsin  
Demanding State – Nevada

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Definitions – Fugitive v. Non-Fugitive/ Accused

- **Fugitive** – Person **physically present** in Demanding State at time of commission of crime
  - Examples – Crime against person, escape, parole/probation violations
- **Non-Fugitive/Accused** – Person **physically outside** Demanding State at time of commission of crime
  - Examples – Internet crimes, telemarketing, criminal non-support

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Definitions – “Fugitive” Complaint & Warrant

- **Fugitive Complaint:**
  - **Charging document** filed by prosecutor in Asylum State
  - Initiates **“local charges”** as fugitive (or non-fugitive) from justice
- **Fugitive Warrant:**
  - **Arrest warrant** issued by the local court in the Asylum State
  - Authorizes arrest/detainment of person in Asylum State while awaiting Governor’s Warrant

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Definitions – Application, Requisition, Governor’s Warrant

- **Application for Requisition:**
  - **Formal written request** from Demanding State prosecutor to Demanding State Governor
  - Requests Demanding State Governor issue a **Requisition** to Asylum State Governor for return of person
- **Requisition:**
  - **Formal demand** for return of person from Demanding State Governor to Asylum State Governor
  - Supports Asylum State Governor’s issuance of a Governor’s Warrant
- **Governor’s Warrant:**
  - Warrant issued by **Asylum State Governor** commanding the arrest and delivery of person to Demanding State

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Definitions –  
Waivers

- **Waiver of Extradition:**
  - Person signs **written waiver** before Asylum State court relinquishing right to formal extradition process
- **Pre-Signed Waiver of Extradition:**
  - Condition of bail/parole/probation relinquishing right to formal extradition proceedings **signed in Demanding State** prior to leaving the state

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Basic  
Principles of  
Extradition

- **Extradition:**
  - **Fugitive** – Mandatory and summary procedure
  - **Non-Fugitive** – Discretionary procedure
- **Intent:**
  - **Return** person to Demanding State as swiftly as possible for prosecution/further action
- **Purpose:**
  - To **preclude** any state from becoming a sanctuary

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Extradition Law

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Extradition Law

- Extradition Clause of the U.S. Constitution (1789) (Art. IV, § 2, cl. 2)
- Federal Act of 1793 (18 U.S.C. § 3182)
- Uniform Criminal Extradition Act (UCEA) of 1936 (as adopted by party states/territories)
  - NAE0 Manual, App. A

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Federal Act (18 U.S.C. § 3182)

Whenever the executive authority of any State or Territory demands any person as a **fugitive** from justice... 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 ... the executive authority of the State, District, or Territory to which such person has fled shall cause him to be **arrested and secured**, ... [and] ... shall cause the fugitive to be **delivered** to such agent when he shall appear. **If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.**

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Extradition Clause of the Constitution (Art. IV, §2, cl. 2)

**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 the demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction.**

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Extradition Clause – “A person charged ...”

- Federal Act and Extradition Clause – treason, felony or “other crime” (i.e. misdemeanor)
- UCEA:
  - Fugitives – felony, misdemeanor, escape, abscond (parole/probation), unsatisfied judgment or sentence, failure to appear, juveniles
  - Non-fugitives

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Extradition Clause – “any State” “another State” “executive authority”

- Applies to all States and U.S. territories
  - *Puerto Rico v. Brandstad*, 483 U.S. 219 (1987)
- Does not apply to the federal government
- Does not apply to foreign countries
  - U.S. Department of Justice (DOJ), Office of International Affairs (OIA)

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Extradition Clause – “any State” “another State” “executive authority” (cont’d)

- UCEA dependent on each state’s laws
- UCEA NOT adopted by:
  - Federal government
  - Mississippi
  - North Dakota
  - South Carolina
  - Guam

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Extradition Clause – “shall flee”

- Reason for departure is irrelevant
  - New Mexico, ex rel. Ortiz v. Reed*, 524 U.S. 151 (1998)
- If leave involuntary, still a fugitive
  - Appleyard v. Commonwealth of Massachusetts*, 203 U.S. 222, 227 (1906)

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Extradition Clause – “shall”

- Mandatory and summary procedure in Asylum State**
  - Puerto Rico v. Brandstad*, 483 U.S. 219 (1987)
- Asylum State:
  - No discretionary power over extradition of fugitives**
    - Michigan v. Doran*, 439 U.S. 282 (1978)
  - Discretionary power over non-fugitives**

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Extradition Clause – “shall” (cont’d)

- Extradition part of **arrest process**:
  - Determination of guilt not an issue
    - California v. Superior Court (Smolin)*, 482 U.S. 400 (1987)
- Alleged violation of constitutional right if extradited not an issue
  - See *Pacileo v. Walker*, 449 U.S. 86 (1980)

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Uniform Criminal Extradition Act (UCEA)

- Applies to **fugitives** and **non-fugitives**
- Felonies, misdemeanors, absconded (convicted), escaped, parole/probation, juveniles
- **Procedure** for orderly arrest and rendition:
  - Arrest
  - Arraignment
  - Detention
  - Service of Governor's Warrant
  - Writ of habeas corpus

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Uniform Criminal Extradition Act (UCEA)

Subject to the provisions of this act, the provisions of the Constitution of the United States controlling, and any and all Acts of Congress enacted 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.

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Extradition Procedure

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How An Extradition Starts

- Person **commits crime** in Demanding State and:
  - avoids arrest
  - fails to appear at sentencing
  - escapes custody
  - violates parole/probation
- **Arrest warrant** issued in Demanding State and entered into NCIC
- Person **located** in Asylum State

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Extradition Process – 3 Parts

- Part 1 – **Asylum State** – arrest, arraignment, custody
- Part 2 – **Demanding State** – Prepares Requisition
- Part 3 – **Asylum State** - Issues Governor’s Warrant and holds hearings

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Part 1 – Asylum State’s Initial Actions

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Initial Decisions By Asylum State

- When person found, Asylum State authorities may:
  - Arrest person **without “fugitive” warrant**
  - Arrest person **with “fugitive” warrant**
  - Conduct surveillance, arrest **with Governor’s Warrant**
  - Do nothing/release person – Demanding State will not extradite

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Demanding State’s Arrest Warrant

- Judicial officer (judge/magistrate) only has authority over peace officers in the State where the warrant issued
- Arrest warrant can only be executed in issuing state
  - *State v. Everett* (520 P.2d 301, 303 (Ariz. 1974)) (“The general rule of law ... is that a warrant of arrest issued in one state cannot be executed outside the boundary of the issuing state.”)
- Warrants issued to: “To any Sheriff, Constable, Marshall, Policeman, or Peace Officer **in this State**”

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Demanding State’s Arrest Warrant (cont’d)

- Demanding State NCIC warrant **not served/executed** by Asylum State law enforcement
- Bail specifications in Demanding State arrest warrant:
  - Asylum State judge/magistrate not bound by amount specified in Demanding State warrant

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Arrest Without A "Fugitive" Warrant

- Locate Demanding State arrest warrant in NCIC
- Demanding State's arrest warrant provides sufficient **reasonable/probable cause** for arrest in Asylum State
  - Charged with crime punishable by death or imprisonment for term exceeding one year (i.e. **felonies** only)
  - Convicted of crime punishable by death or imprisonment for term exceeding one year (i.e. escaped; violated bail, probation or parole)

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Arrest Without Fugitive Warrant (cont'd)

- Asylum State contacts Demanding State to determine if Demanding State will extradite
  - If Demanding State will not extradite, release person (unless local charges pending)
  - If Demanding State will extradite, person must be taken before magistrate for first appearance/arraignment pursuant to Asylum State laws

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Fugitive Complaint and Warrant

- If Demanding State will extradite, Asylum State prosecutor:
  - Requests certified copies of Demanding State charging document and warrant
  - Immediately files Fugitive Complaint
  - Asylum State court issues Fugitive Warrant (required for arrest if misdemeanor/gross misdemeanor)
- Does prosecutor file Fugitive Complaint and Warrant before or after first appearance/arraignment?

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**Fugitive Complaint – Content**

- Person is fugitive or non-fugitive
- Person committed crime, failed to appear, escaped, absconded and/or violated in Demanding State
- Arrest warrant issued by Demanding State
- Attach certified copies of charging document and arrest warrant from Demanding State (if available)
  - NAEO Manual, Forms 7, 7-A

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**Fugitive Complaint and Warrant**

- Is it still a “fugitive” complaint/warrant if person is a “non-fugitive” under extradition law?
- Is it still a “fugitive” complaint/warrant if person is wanted for a misdemeanor/gross?

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**Arrest With Fugitive Warrant**

- After Asylum State prosecutor files Fugitive Complaint, Asylum State court issues Fugitive Warrant
- Fugitive Warrant required to arrest person charged with misdemeanor/gross misdemeanor
- Asylum State serves Fugitive Warrant on wanted person

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**Pre-signed Waivers**

- Asylum State prosecutor provides to court at first appearance/arraignment
- Must be recognized under Asylum State laws
  - NAEO Manual, App. A-5
  - Interstate Compact
- Questions:
  - Is person wanted for violation of bail, probation or parole?
  - If yes, is there a pre-signed waiver?
  - Does pre-signed waiver satisfy Asylum State law (if they exist)?
- If yes to all, Asylum State prosecutor should obtain certified copy of pre-signed waiver

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**First Appearance/Arraignment**

- Asylum State court informs the person:
  - Reason for arrest – criminal matter pending in Demanding State
  - Right to counsel – *appointed vs. retained?*
  - Right to issuance of Governor’s Warrant
  - Right to waive issuance of Governor’s Warrant
  - Right to bail until Governor’s Warrant issued
    - NAEO Manual, App. A-10
- *Do you waive extradition?*

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**Waiver of Extradition**

- If person waives extradition:
  - Waiver must be in writing
    - Revised NAEO Sample Waiver (NAEO Manual, Form 6)
  - No bail permitted on waiver
- Asylum State court sets status check (some states)
- NOTE – Person cannot avoid local charges with waiver (unless Asylum State makes such arrangements with Demanding State)

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Waiver of Extradition – Deadline for Transport

- Asylum State court sets deadline for Demanding State to transport person
  - Reasonable time 30 days?
    - 18 U.S.C. § 3182 – “if no such agent appears within thirty days from time of arrest, the prisoner may be discharged”
  - Arrest = signing of waiver (puts person in same position as if Governor’s Warrant served/arraigned)
- Allow Private Transport Company?
  - NAEO Manual, App. A-8

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Waiver of Extradition – Notification

- Asylum State sends copy of waiver to Demanding State prosecutor and Asylum State Governor/Attorney General
- Asylum State notifies Demanding State that person ready for pick-up by:
  - Teletype
  - Telephone (followed-up in writing)
- Demanding State arranges transport

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Nonjudicial Waiver of Extradition

- Not a pre-signed waiver
- Only recognized in a few states
  - Oregon is one
- Process:
  - Sheriff/PD present waiver form to person in jail after arrest
  - IF signed, no need for Fugitive Complaint or first appearance/arraignment
  - Must comply with state law (i.e. in writing)

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## Identity Hearing

- Depends upon State law
  - Used in California
- Only used where person denies identity
- Process:
  - After first appearance/arraignment (within 10 days)
  - Must find probable cause to believe person is the person wanted in Demanding State
  - Booking photo/fingerprints can be sufficient evidence
  - If not identified as wanted person, released from custody

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## Person Refuses to Waive – Bail

- **Bail at Asylum State court's full discretion**
- Bail may be set UNLESS:
  - Offense punishable by life or death in Demanding State
  - Escape and/or violated parole/probation (some states)
  - Waived extradition
- Need not honor Demanding State arrest warrant bail amount

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## Person Refuses to Waive – Bail (cont'd)

- Should not consider bail when held solely on Demanding State arrest warrant
- May address at each status check before Asylum State court
- Reminder – if arrested with a "fugitive" warrant – Asylum State's initial detention does not execute Demanding State's warrant

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Person Refuses to Waive – Bail (cont'd)

- Local state charges:
  - If bail granted and posts bail on extradition
    - Dependent on Asylum State law
  - If fugitive matter held in abeyance?
- May use Fugitive Complaint to argue against bail on local charges

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Person Refuses to Waive – Notification

- Asylum State notifies Demanding State to start formal extradition process by completing Application for Requisition
- Warns Demanding State of time limitations:
  - Date person arrested in Asylum State
  - Date refused to waive
  - Date of next court appearance in Asylum State
  - Asylum State law on time limitations

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Person Refuses to Waive – Time Limitations

- Calculated from date judge/magistrate commits person following finding of probable cause
  - Safer – calculate from date taken into custody
- Generally person placed in custody for 30 days pending issuance of Governor's Warrant, with additional 60 days if needed at court's discretion = **90 days**
  - Oregon – 45 days
- Differs by State
  - NAO Manual, App. A-3

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Person Refuses to Waive – Time Limitations (cont'd)

- Only applies to persons in custody
- Time limits at discretion of Asylum State court up to limits set by state law
- If Governor's Warrant not issued within timeframe, person must be released
- Can toll time in some states:
  - Arraign person simultaneously with fugitive/non-fugitive charges?
  - NAEO Manual, App. A-4

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Part 2 – Demanding State Prepares Formal Requisition

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Demanding State Process Overview

- Process typically begins when Asylum State notifies Demanding State that person refused to waive extradition
- Demanding State prepares application for issuance of Governor's Warrant to Asylum State Governor for extradition of person and Demanding State Governor issues **Requisition**

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Demanding State Prepares Application for Requisition

- Application prepared by Demanding State prosecutor
  - NAO Manual, Forms 1, 1-A, 1-B
- Prosecutor requests Demanding State Governor issue Requisition to Asylum State Governor
- Application includes:
  - Charging document
  - Warrant "issued thereupon"
  - Proof of identity (sample affidavit)
  - Certifications (NAEO Manual, Form 3)
  - Special requirements by state
    - NAO Manual, App. A-1

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Once Application Completed

- Demanding State prosecutor sends application and attachments to Demanding State Extradition Officer
- Demanding State Extradition Officer and legal counsel conduct legal review of paperwork
  - Ensure compliance with **Demanding State UCEA Statute**
  - Ensure compliance with **Asylum State** special requirements

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**CHECK LIST—REQUISITION FOR GOVERNOR'S WARRANT  
NEVADA IS DEMANDING STATE (NRS 179.223)**

1 <sup>st</sup> Review	2 <sup>nd</sup> Review	
Extradition Staff	DAG	<b>APPLICATION – MUST INCLUDE THE FOLLOWING:</b>
		Name of the person charged
		Crime(s) charged
		Time, place and circumstance of crime(s)
		State where person believed to be & consistent throughout app
		Written description of person (preferred not required)
		Individual named as State/County agent
		Statement that justice requires the return & proceeding not instituted to enforce private claim
		Statement if present in demanding state at time of commission of crime(s) & fled from State
		Certification from Prosecutor
		Labeled – fugitive or – non-fugitive/accused
		<b>ATTACHMENTS – MUST INCLUDE THE FOLLOWING:</b>
		Four certified copies of the charging document: <ul style="list-style-type: none"> <li>a. complaint signed before a judge;</li> <li>b. information and affidavit;</li> <li>c. indictment; or</li> <li>d. judgment of conviction.</li> </ul>
		Warrant "issued thereupon"
		Probable cause affidavit/police report if complaint or information
		Verify fugitive status (if in Demanding State at time of crime)
		Confirm all a.k.a. in Requisition/Application in supporting documents
		Confirm all physical identifiers in application (if applicable)
		Fingerprint and/or photograph <ul style="list-style-type: none"> <li>• If not generated by Nevada, need affidavit that individual in custody is wanted person.</li> </ul>
		Copy of violated criminal statute(s)

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Once Paperwork Approved By Demanding State

- Formal **Requisition**:
  - Signed by Demanding State Governor
  - Secretary of State authenticates
  - Specifies **fugitivity**:
    - Fugitive OR
    - Non-fugitive/accused
- Demanding State sends Requisition, Application for Requisition and supporting paperwork to Asylum State
  - NAOE Manual, App. A-2 – number of packets

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Part 3 – Asylum State Issues Governor’s Warrant and Holds Hearings

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Review Of Paperwork

- Asylum State Extradition Officer and legal counsel review Demanding State’s Application for Requisition and Requisition
  - Ensure compliance with **Asylum State** UCEA Statute
  - Ensure compliance with **Asylum State** special requirements

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CHECK LIST—GOVERNOR'S WARRANT NEVADA IS ASYLUM STATE (NRS 179.183)		
1 <sup>st</sup> Review	2 <sup>nd</sup> Review	
Extradition Staff	DAG	<b>APPLICATION – MUST INCLUDE THE FOLLOWING:</b>
		Name of the person charged
		Crime(s) charged
		Time, place and circumstance of crime(s) (not mandatory)
		State where person believed to be & consistent throughout app.
		Written description of person (if no prints/photo attached)
		Individual named as State/County agent
		Statement that justice requires return & proceeding not to enforce private claim
		Statement if present in demanding state at time of commission of crime(s) & fled from the State
		Certification from Prosecutor
		Labeled – fugitive or non-fugitive/accused
		<b>ATTACHMENTS – MUST INCLUDE THE FOLLOWING:</b>
		Review Requisition – name(s), charges, attached documents, named agent, fugitive/non-fugitive, both states
		Certified copies of the charging document:
		a. complaint signed before a judge;
		b. information with affidavit;
		c. indictment; OR
		d. judgment of conviction.
		Warrant "issued thereupon"
		Probable cause affidavit/police report if complaint or information
		Verify fugitive status (in Demanding State at time of crime)
		Confirm all a.k.a. in Requisition & Application in supporting documents
		Confirm all physical identifiers in application (if applicable)
		Fingerprint and/or photograph.
		• If not generated by Demanding State, need affidavit that individual in custody is wanted person
		Copy of violated criminal statute(s) (not mandatory).
		PLED GUILTY – need Guilty Plea Agreement and Requisition to

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Governor's Hearing

- Only a few states
  - Maryland
  - South Carolina
- Non-fugitive cases only
  - Informal hearing to persuade Governor not to extradite
  - Request for hearing made in writing by counsel
- Fugitive cases – Not apply because extradition of fugitive is mandatory

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Issuance And Service Of Governor's Warrant

- Once approved, Asylum State Extradition Officer prepares **Governor's Warrant** for Asylum State Governor to sign
  - Do Governor's Warrants expire?
    - NAEO App. A-6
- Governor's Warrant served on wanted person by local law enforcement with copy of Application for Requisition and Requisition (need redaction?)
- If person not currently in custody, must be taken into custody once served with Governor's Warrant

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## Once Governor's Warrant Served

- No bail
- If local charges:
  - Complete local charges before extraditing
  - Governor's Warrant held in abeyance/lodged as a detainer?
    - NAEO Manual, App. A-7
  - Asylum State Governor discretion to immediately extradite to Demanding State
  - If local charges in multiple Asylum State jurisdictions, Governor's Warrant must follow wherever wanted person located

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## Doran Hearing/Arrestment

- *Doran*\* hearing in Asylum State – wanted person informed by Asylum State court:
  - Demand made for surrender by Demanding State
  - Crime(s) charged in Demanding State
  - Right to counsel – *appointed vs. retained?*
  - May test legality of extradition with petition for writ of habeas corpus
- *Do you waive extradition?*
  - NAEO Manual, App. A-11
  - \**Michigan v. Doran*, 439 U.S. 282 (1978)

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## Waiver of Extradition

- Person can waive extradition (must be in writing in most states)
- Asylum State court issues order granting extradition
- Asylum State court sets deadline for Demanding State to transport person
- Asylum State notifies Demanding State that person available for transport
- Person transported to Demanding State

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**Person Refuses To Waive**

- Person may file state habeas petition challenging extradition
- Asylum State court should only consider:
  - Whether extradition papers in order
  - Whether person substantially charged with crime(s) in Demanding State
  - Whether person is individual sought
  - If person is properly labeled fugitive or non-fugitive in paperwork

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**State Habeas Proceedings**

- Asylum State prosecutor defends extradition
- Governor's Warrant prima facie evidence that all extradition requirements met
- Once prima facie showing made, wanted person has burden by **clear and convincing evidence**
  - Documentation
  - Charging document/warrant
  - Affidavits
  - Photographs/fingerprints
- If writ denied, person may appeal

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**If Court Denies Petition**

- Asylum State court issues order granting extradition
- Asylum State court sets deadline for Demanding State to transport person
- Asylum State notifies Demanding State that person is available for transport
- Person transported to Demanding State

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**Demanding State – Next Steps**

- Bail set by Demanding State court
- Credit for time served in Asylum State challenging Extradition – dependent on state law
  - Credit for all time spent in Asylum State OR
  - Credit for all time spent in Asylum State *unless had local charges* OR
  - No credit for time spent in Asylum State OR
  - No credit for escapee, probation/parole violators

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**Summary**

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**Extradition Summary**

- 90 day (?) timeframe to serve Governor's Warrant
- Demanding State Governor issues Requisition
- Asylum State Governor issues Governor's Warrant
- Can extradite for misdemeanors and gross misdemeanors
- Pre-signed waiver only if accepted by Asylum State court
- No bail once waive or served with Governor's Warrant

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Additional Materials  
USB/NAEO  
Website

- Revised NAEIO Waiver
- Summary of Extradition
- Workflow Chart
- Nevada Checklists
  - Asylum State
  - Asylum State P&P
  - Demanding State
  - Demanding State P&P

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# CONSULAR NOTIFICATION

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Vienna Convention

U.S. Dept. of State

Vienna Convention – When foreign national arrested AND/OR when one extradited, **you** must provide consular notification warnings, act on those warnings, and record actions in case file

Consular Notification – U.S. Dept. Of State, Bureau Of Consular Affairs – <https://travel.state.gov/content/travel/en/consularnotification.html>

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Mandatory/  
Not  
Mandatory  
Notification  
Country

Mandatory

- Inform person they may communicate with consulate but you must notify consulate of arrest
- Notify nearest consulate without delay
- Record notification
- Allow consulate access to arrestee if requested

Not mandatory

- Inform person they may communicate with consulate
- If the ask for notification, notify nearest consulate without delay
- Record request and your actions
- Allow consulate access to arrestee if requested

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Thank you!

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