

**THE GEORGIA INDIGENT DEFENSE
COUNCIL
DIVISION OF PROFESSIONAL EDUCATION**
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**CRIMINAL EXTRADITION:
AN ATTORNEY-S GUIDE FOR EXTRADITION
LAW IN GEORGIA**



By

**Michael Mears
The Multi-County Public Defender Office
June 2002**

Preface

This booklet is provided as part of the Georgia Indigent Defense Council's Professional Education Program for criminal defense lawyers in Georgia. The Georgia Indigent Defense Council's Professional Education Division is dedicated to insuring the highest quality legal representation to persons facing criminal charges. It is the goal of the Georgia Indigent Defense Council's attorneys and staff to provide professional assistance, consultations and training to attorneys throughout the State of Georgia.

Despite claims of economic power and military successes, every society will eventually be judged by how it treats the poor, disadvantaged, and displaced. The Georgia Indigent Defense Council's staff strives daily to make the promises of the United States Constitution and the Constitution of Georgia a meaningful reality. Toward these goals, the Georgia Indigent Defense Council, for more than twenty-five years, has struggled to bring understanding, caring and compassion to Georgia's criminal justice system. Hopefully, this booklet will help each Georgia criminal defense lawyer continue the quest to bring a sense of justice to every aspect of the prosecution of a criminal charge.

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PART ONE

INTRODUCTION

Section One:

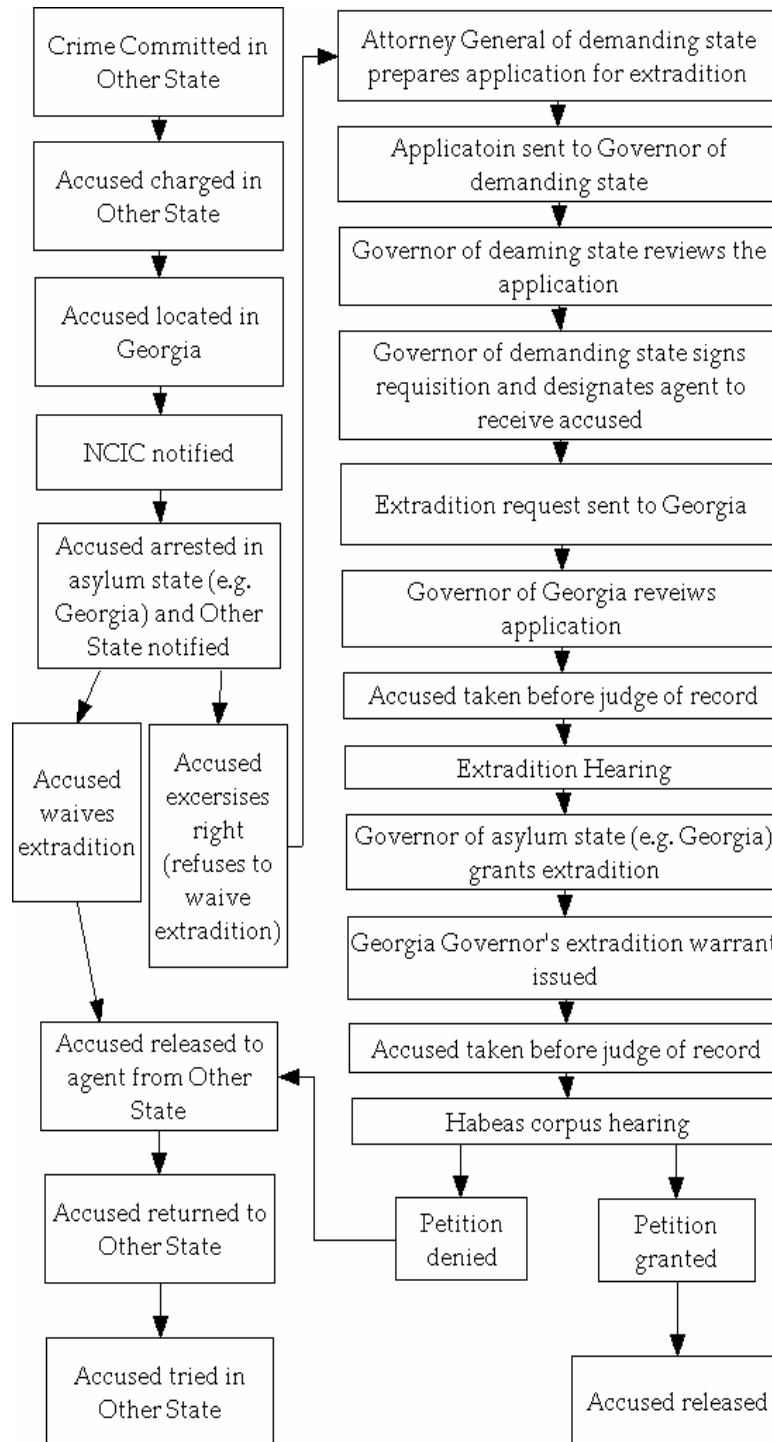
A General Overview of the Extradition Process

Extradition is the legal surrender of an accused person from one state or country to another state or country for the purpose of resolving criminal charges. The state or country to which the accused person has fled is usually referred to as the asylum state or country. The state or country which is seeking the return of the accused person is referred to as the demanding state or country.

Generally, several events must take place before an asylum state becomes involved in the extradition process. These events will usually include: (1) the commission of a crime in the demanding state; (2) the accused person being identified as the person who committed the crime; (3) the accused person being charged with the crime either by the issuance of an indictment or the issuance of an arrest warrant; (4) the fleeing of the accused person across state lines or across the borders of another country; and (5) the request by the demanding state that the asylum state return the accused person to the demanding state.

After an extradition request has been made by the demanding state and the accused person has been found, the first thing that must occur is the detainment or arrest of the accused person. If the accused does not to waive his right to contest the extradition request, a legal process begins which requires the involvement of the Governor or his designee, law enforcement agencies, the district attorney or the attorney general, and a court of record.

The Typical Extradition Process in Georgia



PART TWO

EXTRADITION LAW

Section One:

International Extradition Treaties

Generally, nations cooperate in matters relating to crime control and the exchange of persons who commit a crime in one nation and then flee to another nation. Historically, these exchanges were made pursuant to formal agreements such as treaties, compacts, etc.

In the post-World War II era of international relationships, the United Nations has assumed an important role in coordinating the efforts of various nations with regard to extradition treaties. In the terminology of international law, extradition generally refers to the surrender by one nation to another nation of a person who has been accused or convicted of a crime. Although there are other forms through which nations can agree to exchange persons accused of crimes, extradition agreements between nations are usually found in the form of compacts, bilateral treaties, multilateral treaties, or conventions. A compilation of treaties and agreements to which the United States is a party is provided in

Appendix A.

Section Two:

Classifications of International Extradition Treaties

Extradition treaties can be classified as having an enumerative method or an

eliminative method.¹ A treaty that follows the enumerative method lists and defines the crimes for which extradition between the agreeing nations will be granted. In the eliminative method, extraditable offenses are defined in terms of their punishability according to the laws of the agreeing countries.

In addition to extradition treaties between nations, other arrangements for the exchange of persons accused of crimes include agreements relating to judicial or legal assistance in criminal matters, penal matters, and more recently, narcotic drug enforcement matters.

Treaties relating to judicial or legal assistance matters involve the provision of legal assistance in proceedings concerning acts which are punishable by courts of law. Treaties relating to penal matters primarily involve agreements between nations to cooperate in the fight against crime as well as to promote the rehabilitation of prisoners who are sentenced to serve in penal establishments. Some nations have treaties and agreements which are aimed specifically at suppressing the illegal traffic and production of illegal drugs and other related substances. The United States Department of State's Office of the Legal Adviser, Treaty Affairs website at www.state.gov/www/global/legal_affairs is a good source of information about the extradition agreements to which the United States is party.

Section Three:

International Extradition Procedures

International extradition from and to the United States is governed wholly by federal law. A request for extradition from or to a foreign country is usually coordinated

through the United States Department of Justice, Criminal Division, Office of International Affairs. Requests for the extradition of persons by foreign governments will be determined, at the first instance, by a federal judge or federal magistrate, but the ultimate decision to extradite is ordinarily a matter for the Executive Branch of government and the President.

The President has considerable discretion related to the decision to extradite, but that discretion must be exercised by whatever treaty provisions are in existence between the United States and the other nation involved in the extradition process. The president may choose not to extradite an individual from the United States where, in the opinion of the judiciary, the individual's constitutional rights would be violated. Of course, the terms and conditions of U.S. Treaties and International Compacts will determine, to a large extent, the application of such questions in each individual case. However, social issues and the evolving standards of justice can also play a role in the extradition decision. For example, in recent years, many foreign nations have refused to extradite to the United States in cases in which the death penalty is being sought. Quite often, the decision to honor a United States request for extradition has involved an agreement by the United States not to seek the death penalty in exchange for an agreement to have an individual extradited to the United States.

As noted previously, international extradition is governed by federal law and not individual state law. Whenever a fugitive from justice from a foreign country is found in Georgia, the Governor will be contacted by the Department of Justice and will be asked to

issue a warrant for that person's arrest in accordance with whatever treaty or international compact provisions are relevant to the demanding nation. If the treaty stipulations are met and the request for extradition from the foreign country are determined to be in order by a federal judge or magistrate, the person will be arrested and turned over to the authorities from the foreign country.ⁱⁱ

Section Four:

Interstate Extradition

Interstate extradition is governed by the United States Constitution and federal law. Article IV, Section 2, Clause 2 of the U.S. Constitution provides:

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.

Pursuant to Article IV of the U.S. Constitution, Congress has enacted implementing statutes that set forth the procedure for the processing and executing fugitive extradition requests between the various states. This legislation has been codified at 18 U.S. Code 3182. This legislation provides, in part:

[W]henever 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 chief magistrate of the State or Territory from whence the person so charged has fled, the

executive authority of the State, District or Territory to which such 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 from the time of arrest, the prisoner may be discharged.

This legislation is not, by its nature, self-executing, and there was no express grant of power by Congress to the federal government to carry out the effect of the legislation. In fact, the United States Supreme Court initially held that this legislation was merely declaratory of the moral duty of the chief executive of each state to honor the request of the chief executive of another state. In Kentucky v. Dennisonⁱⁱⁱ the Court held that the Federal Government has no power to impose on a State officer, as such, any duty whatever, and compel him to perform it. .^{iv}

In 1934, Congress passed legislation which made it a federal crime for any person to flee from one State to another for the purpose of avoiding prosecution in certain cases.^v This legislation, usually referred to as Interstate Flight to Avoid Prosecution,[@] did not directly address the issue of interstate extradition.^{vi} However, in 1987, the United States Supreme Court overruled Dennison and held that the States, Districts and Territories may invoke the power of federal courts to enforce a proper request for the extradition of a fugitive who has fled from one state to another.^{vii} In Puerto Rico v. Branstad, et al, the United States Supreme Court stated:

[T]he language of the Clause [Extradition Clause] is clear and explicit.=Michigan v. Doran, 439 U.S. 282, 286, 99 S.Ct. 530, 534,

58 L.Ed. 2d 521 (1978). Its mandatory language furthers its intended purposes: enable each state to bring offenders to trial as swiftly as possible in the state where the alleged offense was committed, and preclude any state from becoming a sanctuary for fugitives from justice in another state. The Framers of the Constitution perceived that the frustration of these objectives would create a serious impediment to national unity, and the Extradition Clause responds to that perception. It would have been far better to omit it altogether, and to have left it to the comity of the States, and their own sense of their respective interests, than to have inserted it as conferring a right, and yet defining that right so loosely as to make it a never-failing subject of dispute and ill-will. Kentucky v. Dennison, 24, How. at 102. We affirm the conclusion that the commands of the Extradition Clause are mandatory, and afford no discretion to the executive officers or courts of the asylum State.^{viii}

It is not necessary that the person who has been accused of treason, a felony or other crime have actually fled or departed from the accusing State after an indictment or charge has been made in order for him to be classified as a fugitive. Neither is it necessary for the accused person to have left the state for the purpose of avoiding anticipated prosecution in order to be classified as a fugitive. Even if the person being accused of the crime has been involuntarily brought into a state upon a request for extradition from another state and then an extradition request is made from a third state, he can be extradited. For a governor of a state to initiate the extradition process all that is required is that a person be charged with a crime in another state within the scope and regular course of prosecuting criminals.

The person whose extradition is being sought has no constitutional right to be heard in the asylum state on the issues of whether he is guilty, whether he has been properly charged with a crime, or whether he is legally or factually a fugitive from justice. The

person being sought by extradition can not ask the asylum state to inquire into the motives of the demanding state or seek an explanation for any long delays in requesting that he be extradited. Issues such as defenses to the charges, the running of statute of limitations, or claims of double jeopardy can not be raised in the asylum state. The assertion by the accused that the punishment and confinement to which he might be subjected in the demanding state would be cruel and unusual punishment can not be made in the asylum state.

Section Five:

A Fugitive from a Georgia Chain Gang

In 1932 a movie titled *I Was a Fugitive From a Georgia Chain Gang* was made about the escape of Robert E. Burns from a Georgia prison and the attempts by Georgia to have him extradited back to Georgia. Mr. Burns had been imprisoned at Bellwood work camp in Fulton County as a result of having been convicted of a six dollar robbery. He escaped from the chain gang and was later recaptured. After a promise was made by Georgia officials that if he would return he would only have to serve thirty more days in jail, he waived extradition. However, upon his return he was sentenced to another twelve months on the chain gang in Troup County, Georgia. He escaped again and went to New Jersey where he wrote a book entitled, *I Am a Fugitive from a Georgia Chain Gang*. The Governor of New Jersey refused to extradite Mr. Burns to Georgia, a decision which infuriated law enforcement officials in Georgia. In December 1932, the editors of the LaGrange Daily News and Graphic-Shuttle wrote an editorial protesting the refusal of New

Jersey to extradite Mr. Burns. They wrote that "such molly coddle attitudes toward the criminal --- such sob-stuff concerning punishment of offenders --- making heroes and martyrs of hold-up men is certainly one of the explanations of the astounding increase in crime in this country.@x

Section Six:

State Legislation and Extradition Law

States have the authority to enact legislation relating to interstate extradition as long as that legislation does not conflict with federal law or the U.S. Constitution. For example, a state law can supplement federal law by addressing matters that are not covered by federal law, as long as that supplemental legislation does not conflict with federal law. In 1926, in order to avoid needless conflicts with federal laws and individual state laws, the Uniform Criminal Extradition Act (UCEA) was drafted and has since been adopted by every state except two, Mississippi and South Carolina. The UCEA details the requirements for interstate extradition and provides for uniformity among the states. Georgia has adopted the UCEA. The Act is codified at Section 17-13-20 of the Official Code of Georgia. An outline of Georgia's codification of the UCEA is included as **Appendix B** for easy reference.

Section Seven

Returning Fugitives to Georgia

In addition to the UCEA and consistent with other federal law, Georgia has codified

rules concerning applications for the extradition of a person from another state to Georgia. Those requirements are found at O.C.G.A. Section 17-13-1 and provide that any application to the governor for the requisition of a person from another state must be made by a district attorney, prosecuting attorney of a state court, a judge of a city or state court, or the mayor of any municipality. Those persons must present to the governor's office the full name of the person being sought for extradition, the crime charged, the state or territory to which that person has fled or in which he is located, and the full name of the person who is suggested to act as an agent for the state to receive and bring the person back to Georgia. The application requesting that an accused person be returned to Georgia must also show that the ends of public justice require that the person be brought back to Georgia for trial and that the request for extradition is not for the purpose of enforcing the collection of a debt or for any private purpose.

The person who is designated as the person to receive and bring the fugitive back to Georgia can not be the prosecutor. The Governor is not bound by the suggested name and can appoint any suitable person to act as an agent for the State of Georgia for the purpose of receiving the fugitive and bringing him back to Georgia.

The application to the Governor of Georgia for the extradition must be accompanied by an affidavit from the prosecutor and that affidavit must aver that the request for extradition is for the sole purpose of punishing the fugitive and not to enforce the payment of a debt. If the person being sought has been indicted, the request must also have two certified copies of the indictment or presentment attached to the request. If the person

being sought has not been indicted, the affidavit of the prosecutor must describe the crime committed with all of the particularity required in an indictment. ^x

The Governor's office has the authority to formulate internal rules for the receipt and handling of extradition requests from Georgia prosecutors. Once the Governor's office has determined that the request for extradition are in order and are consistent with Georgia law, a request will be sent to the state in which the accused is residing or domiciled. The request will be sent under the Seal of the Governor of the State of Georgia to the chief executive officer of the asylum state.

The expense of returning the accused to Georgia, including the expenses incurred by the designated agent being sent to convey the accused back to Georgia, will fall upon the county where the crime was committed. Georgia law provides that before the agent designated to bring the accused back to Georgia can incur any expense, such as airline tickets or per diem expenses, the county governing authority must first authorize the payment of those expenses.^{xi}

After a person has been brought back to Georgia pursuant to an extradition request to another state or after an accused has waived his right to challenge the extradition and has voluntarily returned to Georgia, he may be tried on any pending charges in Georgia. The State of Georgia is not limited to prosecuting the extradited person on the charges set forth in the requisition for extradition.^{xii}

PART THREE
THE UNIFORM EXTRADITION OF
CRIMINALS ACT

Section One:

Extraditable Offenses

The words treason, felony and other crime found in the United States Constitution and in federal statutes relating to extradition have been held to include every offense known to the laws of the state from which the accused has fled, including misdemeanors. This includes common law crimes as well as statutory crimes. In Georgia, this principle was affirmed in the case of Graham v. State.^{xiii} Indeed, the Attorney General of Georgia issued an official opinion in 1958 providing that by the use of the words "other crime" clearly express[ed] the intention of the General Assembly that the Governor shall extradite persons charged with a misdemeanor in other states.^{xiv}

The accused can, therefore, be extradited when he is charged with any offense that is a crime in the demanding state notwithstanding the form or type of punishment. The asylum state cannot deny extradition of an accused person solely because the offense with which the accused is charged is not a criminal offense in the asylum state. The UCEA, as codified by the Georgia Legislature, clearly states:

[S]ubject to [The Uniform Criminal Extradition Act] the Constitution of the United States, 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 any person charged in

that state with treason, felony, or other crime, who has fled from justice and is found in this state.^{xv} (Emphasis added)

For example, even though the charge may relate to the collection of a debt, if the charge against the accused is a punishable offense in the demanding state he can be extradited. In Stynchcombe v. Smith,^{xvi} the an extradition request demanded the return of an accused to Arkansas from Georgia. A Fulton County trial judge granted the accused's request for a writ of habeas corpus because he believed that the extradition had been requested for the purpose of collecting a debt and that there was no probable cause to believe that a crime had been committed in Arkansas. The Georgia Supreme Court reversed the granting of the writ of habeas corpus and returned the accused to Arkansas. The Supreme Court held that Governor of Arkansas had certified that the accused was charged with the crime of defrauding a secured creditor and that such a crime was punishable in Arkansas. Therefore the Governor of Georgia had to honor the extradition request.^{xvii}

Although the right of an individual state to have a person extradited is not based on a determination of guilt, there must still be a punishable offense charged before the asylum state executive can issue a warrant of arrest and return the accused to the demanding state. A good example of this can be seen in the case of Brown v. Grimes.^{xviii} The Governor of Indiana demanded that the Governor of Georgia extradite Mr. Charles Brown to Indiana to answer an alleged escape charge. The documents provided to the Governor of Georgia asserted that Mr. Brown had been committed to the Indiana

Reformatory on March 11, 1943 after being convicted of auto theft. The documentation showed that Mr. Brown had been sentenced to an indeterminate period of not less than one year and not more than ten years. The papers accompanying the extradition request further alleged that Mr. Brown had escaped from an Indiana prison on or about the 17th day of January, 1956.

The Georgia trial court denied Mr. Brown's application for a writ of habeas corpus and directed his return to Indiana. Mr. Brown filed a challenge to the extradition request and appealed to the Georgia Supreme Court. The Georgia Supreme Court reversed the trial court's decision and refused to extradite Mr. Brown to Indiana. The Georgia court said that the documents provided by the Governor of Indiana clearly showed that Mr. Brown had not committed a punishable crime in Indiana. The court found that Mr. Brown had been sentenced to not more than ten years in prison in 1943 and the documentation accompanying the extradition showed that his escape from prison did not occur until 1956.

Therefore the documentation from Indiana clearly showed that Mr. Brown had not escaped until two years after the completion of his sentence. The Georgia Supreme Court further noted that because he had allegedly escaped from prison more than two years after his sentence had expired. The Court further noted that

[t]here is nothing in any of the documents supporting the extradition warrant to show any extension of the sentence for any cause. A habeas corpus court is not free to speculate on some state of facts which might have resulted in an extension of the sentence. The crime of escape could not have been committed until after Mr. Brown's sentence had expired. When the affidavit supporting the request for extradition

shows that no crime was committed, it is insufficient to sustain an extradition warrant.^{xix}

In some situations, while the law may allow for extradition, civil remedies are the preferred approach. This is true in cases relating to child custody, juvenile runaways, and family and child support. Many of these matters are controlled by Uniform Acts which are adopted by states wishing to coordinate and to provide for uniformity in disposition of those cases. A complete list of uniform laws relating to the transfer of persons from one state to another, to which Georgia is a party, is included in **Appendix C**.

Section Two:

Qualifications to Be s Fugitive

A person's motive for leaving the demanding state and the manner in which he or she came to be in the asylum state has no bearing on his status as a fugitive from justice. If the accused left the demanding state with the knowledge and consent of state authorities, it makes no difference. The accused needs only to have committed, or be accused of having committed, a crime in the demanding state and be found in the asylum state in order to qualify as a fugitive from justice for purpose of extradition.

Under federal law, the accused must have been in the demanding state when the crime was actually committed otherwise the person is not a federal fugitive from justice. However, the UCEA provides for the extradition of a person who committed an act in the asylum state or in a third state which he intended to result in a crime in the demanding state. For example, the accused may have conspired in Virginia to commit a crime which

occurred in Georgia. Georgia can demand extradition of the accused from Virginia as a fugitive from justice even though he or she never entered Georgia.

O.C.G.A. Section 17-13-25 provides that Aon demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in Code Section 17-13-23 with committing an act in this state, or in a third state,@which intentionally results in a crime must be extradited. This rule of extradition applies whenever an executive authority in another state is making the demand. The provisions of this article of the UCEA apply, even though the accused was not in that state at the time of the commission of the crime and has not fled from that state.

In Haupt v. Mitchell,^{xx} an accused was charged with taking actions in Georgia which resulted in the commission of a crime in Florida. The accused argued that since he was never in Florida he could not be considered a fugitive who fled from Florida. The accused argued that since federal law required that he actually commit or be charged with committing a crime while in the state, Georgia could not consider him a fugitive from Florida for the purposes of extradition. The accused further argued that the conflict with the UCEA created a conflict with the U.S. Constitution and therefore the extradition request was invalid. The Georgia Supreme Court held that there was no conflict between the UCEA, as adopted by Georgia and Florida, and the U.S. Constitution and the accused was not exempt from extradition.^{xxi}

PART FOUR

GEORGIA EXTRADITION LAW

Section One:

Initiating the Extradition Process in Georgia

When the Governor of Georgia receives a demand from the governor of another state requesting the extradition of a person from Georgia, an investigation is made into the circumstances of the request. The Governor may ask the Attorney General or any other prosecuting officer in Georgia to investigate the request for extradition or to assist his office in investigating the demand. The Governor can request that a report be made to him with regard to the circumstances and situation of the person for whom the extradition request has been submitted. The investigators can also make recommendations to the Governor as to whether the extradition warrant should be signed.^{xxii}

The Georgia Supreme Court has ruled that, as part of the investigation, the Governor can obtain information from any source available, including, presumably, media reports, and reports from private citizens.^{xxiii} The Courts have also held that the Governor does not have to personally conduct an extradition hearing as long as the final decision of whether to extradite is made by the Governor himself.^{xxiv}

If the Governor determines that the accused should be extradited, he will sign an arrest warrant complete with the official seal of the office of the Governor. The arrest

warrant will be directed to any law officer or any other person whom he designates. Not only does the Governor's arrest warrant give the designee the power to arrest the accused, it also provides that anyone who refuses to assist in the execution of the arrest warrant can be prosecuted for refusing to assist.^{xxv}

The Governor's arrest warrant must substantially recite the facts necessary to the validity of its issuance.^{xxvi} The facts which must be asserted in the arrest warrant are not the facts of the offense(s) charged by the demanding state, but rather the facts relating to the supporting documents from the demanding state.^{xxvii} Once the Governor's arrest warrant has been issued, the accused has the right to challenge the legal sufficiency of the demanding state's documents before an appropriate judicial authority.

If the Governor's arrest warrant is regular on its face, the accused has the burden to show some reason why the warrant should not be executed. There is a legal presumption that the Governor, in issuing the arrest warrant, has complied with the Constitution and the law.^{xxviii} However, no person arrested pursuant to a Governor's arrest warrant can be turned over to the agent from the demanding state until he has been taken before a judge of a court of record in Georgia. The judge in the court of record before whom the accused is brought must inform the accused of the demand for his extradition and the crime with which he is charged in the demanding state. Then the accused must be informed of his right to demand and procure legal counsel to advise and assist him in all matters relating to the extradition.^{xxix}

If any person who has custody of the accused delivers the accused to the

demanding state's agent before the accused has an opportunity to challenge the extradition proceedings and the Governor's arrest warrant, that person can be charged with a misdemeanor and sentenced up to six months in prison and fined up to one thousand dollars.^{xxx}

There are times when Georgia law enforcement personnel will receive notice that a person who is located in Georgia has been charged with the commission of a crime, with having fled from justice, or, after having been convicted of a crime in another state has escaped from custody, broken the terms of his bail, probation or parole. If that person is found in Georgia, a judge or magistrate in Georgia may issue an arrest warrant directing any peace officer to apprehend and hold that person based on the actions of the other state. Once that person has been apprehended, he must be brought back before a magistrate.^{xxxi}

An officer who apprehends a person from another state after receiving information that he has been charged with a crime in that state only has to have a reasonable belief that an out-of-state warrant has been issued and this belief only has to be based upon reliable information from out-of-state officials that a warrant has been issued or will be issued. Georgia law provides that this reasonable belief amounts to probable cause even if peace officer's belief is wrong or mistaken.^{xxxi}

Even if a formal charge or warrant has not been issued in the other state, an arrest of a person may be lawfully made by any peace officer or private person,^{xxxi} without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but

when the arrest is made, the accused must be taken before a judge or magistrate with all practicable speed^{xxiii} and a complaint must be filed against him under oath, setting forth the ground for the arrest.^{xxiii}

An interesting twist to the law of arrest and seizure is found in the Uniform Extradition of Criminal Act. Georgia law^{xxiv} provides that a lawful arrest without a warrant can only be made by a peace officer if the offense for which the arrest is being made is committed in the presence of the peace officer, the person being arrested is trying to escape or if for other cause there will likely be a failure of justice if the person is not arrested without a warrant. In Fields v. State,^{xxv} the Georgia Supreme Court held that the Georgia General Assembly, by enacting the UCEA, expanded the scope of the circumstances in which an arrest without an arrest warrant might be lawfully made.^{xxvi}

After the person has been arrested by a Georgia peace officer on the reasonable belief^{xxvii} that an out-of-state arrest warrant has been or will be issued, he must be brought before a Georgia judge or magistrate. The Georgia judge or magistrate must conduct an examination and if it appears that the person who has been arrested is in fact the person who has been charged with having committed a crime in the other state, the judge or magistrate must, by warrant reciting the accusation, commit him to the county jail for such a time, not exceeding 30 days.^{xxviii} The time for which the arrested person is being committed must be specified in the warrant in order to enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense.^{xxviii}

Unless the person has been charged with an offense is punishable by death or life imprisonment under the laws of the demanding state, the judge or magistrate in Georgia may grant a bail by bond. The bond must be in such a sum and with sufficient sureties to ensure the person's reappearance before the judge or magistrate at a time specified in the order granting bond and for the person's surrender to be arrested upon a warrant issued by the Governor as part of an extradition proceeding.^{xxxix}

If the person who has been arrested is not rearrested pursuant to a Governor's warrant by the expiration of the time specified in the judge's warrant, the judge or magistrate may discharge that person or may recommit him for another period of time, not to exceed 60 days. The maximum period in which the person can be held or kept under the new bond is 60 days.^{xl} Combined with the initial 30 days in which a person can be held pursuant to the arrest on the out-of-state charges, a person can not be held for more than 90 days pending a resolution of his extradition and/or return to the demanding state. The purpose of these time limitations is to prevent unreasonable delays in completing the extradition process. There are no provisions limiting the time period in which the Governor of the demanding state must issue a request for extradition. However, these provisions of the UCEA do limit the amount of time that person can be held while awaiting the issuance of the Georgia governor's arrest warrant pursuant to the request by the demanding state.^{xli}

The UCEA grants the Governor of Georgia the discretion to:

[s]urrender, upon demand of the executive authority of

another state, any person found in this state, notwithstanding the fact that a criminal prosecution or charges under the laws of this state are pending against the person, that the person has already been convicted in this state and is serving a sentence in any jail or penal institution of this state or of any county or municipality thereof, or that the person is serving a suspended or probationary sentence.^{xlii}

If the governor surrenders a person to another state while charges are pending or sentences are being served in Georgia, he may condition the release of the prisoner to the demanding state with whatever conditions and stipulations he feels are appropriate.

Under no condition does the mere surrender of a person who is serving a sentence in Georgia relinquish Georgia's jurisdiction over that person. The governor can stipulate that one of the conditions for the surrender of the person is that the person be returned to Georgia immediately after the disposition of the charges in the demanding state. The only exception to this requirement is where the demanding state has executed the person pursuant to a death sentence in the demanding state.^{xliii} However, the Governor has the right to condition the transfer of a person who is serving a sentence in Georgia to an agreement that the person will be returned to Georgia to complete his sentence in Georgia prior to serving the out-of-state sentence.

Section Two:

Challenging a Request for Extradition

If the accused, being held pursuant to the Governor's arrest warrant, states that he wishes to contest the warrant and challenge his extradition, the judge of the court of record must fix a reasonable time for the accused and/or his attorney to apply for a writ of habeas

corpus. The respondent in the application for a writ of habeas corpus will be the person, i.e., the warden or the county sheriff who has actual custody of the accused. The application for a writ of habeas corpus contesting an extradition arrest warrant must be filed in the county where the accused is being held.^{xliv}

Once the accused has filed the application for a writ of habeas corpus, (1) notice of the filing of the application, (2) a copy of the applications, and (3) notice of the time and place of a hearing on the application must be given to (1) the prosecuting officer of the county in which the arrest has been made, (2) the prosecutor of the county in which the accused is being held in custody, and (3) the designated agent from the demanding state.^{xlv}

Georgia law provides that the district attorney in the county in which the application for a writ of habeas corpus is filed shall file an answer to the application and must defend the issuance of the Governor's arrest warrant. However, the Governor may, at his discretion, direct the Attorney General to file an answer to the application for a writ of habeas corpus and defend the arrest warrant.^{xlvi}

Section Three:

The Application for a Writ of Habeas Corpus

The issue of whether the accused is guilty of the crime for which he has been charged in the demanding state is not an issue that can be litigated in the application for a writ of habeas corpus.^{xlvii} Once the Governor has granted the request of the demanding state for the extradition of an accused and an extradition arrest warrant has been issued,

the only issues which the habeas corpus court can consider are the following: (1) whether the extradition documents are in order; (2) whether the accused has been charged with a crime in the demanding state; and (3) whether the accused is the actual person named in the request for extradition.^{xlvi}

If the trial court, after considering the application for a writ of habeas corpus finds that the extradition documents are in order and that the accused has not met his burden of challenging the documents by proving that he has not been charged with a crime in the demanding state, an order shall be entered directing that the accused be turned over to the designated agent of the demanding state. However, the accused does have the right to appeal to the Georgia Supreme Court from the denial of the application for a writ.

Section Four:

Appealing a Denial of an Application for a Writ of Habeas Corpus

The procedure for appealing a denial of an application for a writ of habeas corpus in an extradition case, as in all appeals involving habeas corpus denials, requires that the accused file a written application for a certificate of probable cause to appeal with the clerk of the Georgia Supreme Court within 30 days from the entry of the order denying him relief. The accused must also file within the same 30-day period a notice of appeal with the clerk of the superior court where the application for the writ was heard.

In order to prevent the execution of the governor's arrest warrant and the turning over of the accused to the designated agent from the demanding state, an order should be requested directing that the extradition proceedings be stayed until such time as the

accused has had an opportunity to appeal the denial of his application for a writ of habeas corpus. If the trial court refuses to grant such a stay, the request can be made by motion to the Georgia Supreme Court. The Supreme Court will either grant or deny the application for a certificate of probable cause within a reasonable period of time after the filing of the application.^{xlix}

If the trial court grants the application for a writ of habeas corpus, the state can appeal directly to the Georgia Supreme Court without filing an application for a certificate of probable cause. The filing of a notice of appeal by the state acts as an immediate supersedeas and stays the granting of the writ until such time as the Georgia Supreme Court hears the appeal. The accused has the right to be released on bail pending appeal as in any pending criminal case.^l

Section Five:

Waiver of Right to Contest Extradition

Any person who is the subject of an extradition request may waive the issuance of the governor's arrest warrant and waive all other procedures set forth in the UCEA. The waiver must be in writing and signed in the presence of a judge or magistrate. However, before a waiver of extradition proceedings can be made, the judge or magistrate must inform the person of his rights to challenge the extradition request and to file an application for a writ of habeas corpus.^{li}

If the person waives his rights to challenge the extradition proceedings, the written consent must be sent immediately to the Governor's office and filed there. The judge or

magistrate who has accepted the written waiver must direct the person who has custody of the accused to deliver the accused to the designated agent or agents from the demanding state along with a copy of the accused written waiver.^{lii}

A person who is serving a paroled sentence from another state and who has been permitted to come into Georgia under the supervision of Georgia parole officers may be returned to the state from which he was paroled without the necessity of a form extradition proceeding where the parole from the other state contained a stipulation or condition that, as part of the terms of his parole, he waived extradition in the event his parole was ever revoked.^{liii}

It should be noted that nothing within the UCEA takes away from the State of Georgia's right, power or privilege to try a person on Georgia for charges for any crime committed within Georgia. If an individual is extradited to a demanding state, the act of granting the request for extradition does not, by the express terms of the Act, act as a waiver to demand the return of the extradited person to Georgia to stand trial or to try the person on the Georgia charges prior to his extradition to the demanding state.^{liv}

PART FIVE

INTERSTATE AGREEMENT ON DETAINERS

Section One:

History of the Agreement Between States

There are times when a person accused of a crime in one state may be found in jail, prison or under some form of detention or legal restraint in another state. The Interstate Agreement on Detainers is a uniform compact between the various states outlining a method by which the custody of those persons can be transferred between states.

The Interstate Agreement on Detainers (Agreement) was originally drafted in 1956 by the Council of State Governments. The Agreement is an interstate compact between forty-eight states, the District of Columbia, Puerto Rico, the Virgin Islands, and the federal government. The two states which have not entered into the Agreement are Louisiana and Mississippi. The Agreement was adopted by Georgia in 1972.^{lv}

The Agreement outlines procedures by which member states may secure the presence at trial of a prisoner incarcerated in the jurisdiction of another compact member. The Agreement also provides a means by which a prisoner may, on his own, demand the speedy disposition of charges pending against him in another jurisdiction (state or federal). The Agreement is invoked only when a "detainer" is initially sent from a member state having untried charges pending against the prisoner to another member state with custody over the prisoner.^{lvi}

Section Two:

What is a Detainer

The term "detainer" is not defined within the Agreement, however, the Supreme Court has held that a detainer is "a notification filed with the institution in which a prisoner is serving a sentence, advising that [he or she] is wanted to face pending criminal charges in another jurisdiction."^{lvii} A detainer alone, filed by a state wishing to obtain custody of a person, does not require the custodial state to produce the prisoner; it merely alerts officials in the asylum state that the prisoner is wanted in another jurisdiction and that the custodial institution should not release the prisoner without notifying the receiving state.^{lviii} Because "a detainer [may remain] lodged against a prisoner without any action being taken on it[,] "^{lix} Detainers based on untried indictments, informations or complaints . . . produce uncertainties which obstruct programs of prisoner treatment and rehabilitation."^{lx} The prisoner in custody has a right to have those uncertainties resolved without awaiting the completion of a sentence in a state. Thus the Agreement provides for the prisoner to invoke its provisions.

The legislative history of the Agreement indicates that its primary purpose is to protect prisoners against whom detainers are outstanding because a prisoner who has had a detainer lodged against him is seriously disadvantaged by such action. The person in custody is in no position to seek witnesses or to preserve his defense. The person accused of a crime in another state must often be kept in close custody and is ineligible for desirable work assignments. What is more, when detainers are filed against a prisoner, he

sometimes loses interest in institutional opportunities because he must serve his sentence without knowing what additional sentences may lie before him, or when, if ever, he will be in a position to employ the education and skills he may be developing.^{lxi} As one court has noted, the Agreement "is designed to encourage the expeditious and orderly disposition of . . . charges [outstanding against a prisoner] and determination of the proper status of any and all detainees based on untried indictments, informations, or complaints."^{lxii} The Agreement provides that each member state must designate an officer (usually referred to as the Agreement Administrator) who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operations of this agreement.^{lxiii} Once a detainer is lodged either the prisoner or the state placing the detainer can set in motion the procedures by which the prisoner is tried in the receiving state. The Agreement contains provisions specifying the number of days within which a prisoner must be brought to trial in the receiving state.^{lxiv}

In Georgia, the Agreement provides that whenever a person has entered upon a term of imprisonment in another state, and if during his term of imprisonment in that state, he is indicted or charged in Georgia and a detainer is lodged against the him, he must be brought to trial within one hundred eighty (180) days after he has been delivered to Georgia.^{lxv} The Agreement does, however, provide that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter

may grant any necessary or reasonable continuance.^{xvi}

Section Three:

Requirements for a Valid Detainer

When a member state makes a request that a person be detained pursuant to the Agreement, Georgia prison officials are required to notify the prisoner of:

- ? The existence of the detainer;
- ? The source of the detainer;
- ? The nature of the charges; and
- ? The prisoner's rights under the Agreement

Section Four:

Invocation of Agreement Provisions by a Prisoner

Once a prisoner has been notified, he may invoke the provisions of Article III of the Agreement and request that the outstanding charges against him in the other state be resolved. An article III request for final disposition is an elective procedure pursuant to which a prisoner voluntarily returns to the receiving state. If the prisoner decides to invoke his rights pursuant to the notification of pending charges against him in a member state, the following process typically takes place:

? The prisoner, after notification of the pending charges or indictment, advises the warden of his desire to invoke the provisions of the Agreement. Any request for a final disposition of the charges in the requesting state also acts as a waiver of extradition with respect to any pending charges contemplated in the requesting state.

? The prisoner must follow the requirements of the Agreement when notifying the warden of his desire to have the charges in the other state resolved pursuant to the Agreement. The notice

sent by the prisoner must be sent by certified mail or statutory overnight delivery.^{lxvii} In one case, a prisoner's request for final disposition of the out-of-state charges were sent to the warden by facsimile transmission.^{lxviii} In another instance, the prisoner sent his notice for a final disposition directly to the executive authority of the other state without the warden's certificate of his status rather than through prison authorities. The Georgia Supreme Court held that the 180-day period did not begin to run until the other state received the required certificate as required by the Agreement.^{lxix}

? The prisoner signs the appropriate forms requesting that the charges pending against him in the other state be resolved.

? The warden must promptly forward the prisoner's request to the prosecutor(s) of the state(s) which filed the detainer(s), together with a certificate of the prisoner's status and a offer of temporary custody of the prisoner to the state which has filed the detainer.

? The prosecutor in the state filing the detainer immediately notifies the warden in charge of the prisoner of his acceptance of the offer of temporary custody.

? When the state having custody of the prisoner has completed all legal proceedings, an agent from the requesting state comes to Georgia to take custody of the prisoner.

? Within 180 days of the time the prosecutor from the requesting state received the prisoner's request for a disposition and the required supporting documents, the prisoner must be brought to trial. Georgia law requires, as noted, that the prisoner must be brought to trial within the 180-day period or during the period covered by any "good cause" continuance. If the prisoner is not brought to trial within that period, the charges against the prisoner must be dismissed.^{lxx}

Article V(e) of the Agreement provides that "[a]t the earliest practicable time consistent with the purposes of this agreement, the prisoner shall be returned to the

Georgia. Even if the sentence in the requesting state is a death sentence, the prisoner would have the right to finish serving his terms of imprisonment in Georgia, before he could be returned to the requesting state under Article III(e) to serve (or be subject to) his death sentence in the other state.^{lxxi}

Section Five:

Invocation of the Agreement Provisions by Prosecutors

Pursuant to the provisions of Article IV of the Agreement, a prosecutor in another member state where charges are outstanding against a person being held in Georgia, may also use the Agreement for the purpose of obtaining temporary custody of a prisoner. Once the detainer has been lodged and the Georgia prisoner has been duly notified, the procedure used to obtain custody of the prisoner in another state typically consists of the following steps:

? The prosecutor for the jurisdiction with the outstanding charges must prepare a formal request for temporary custody and submit copies of the charges to the prisoner, the institution in which the prisoner is being held, and Georgia's Agreement Administrator (see Article VII). The request must be signed by the prosecutor and certified by a judge in the requesting state. Further, the formal request should be accompanied by supporting materials including: certified copies of the complaint, accusation or indictment; the arrest warrant; and such documents which identify the persons such as fingerprints, photographs, or physical description;

? Once the request is received in Georgia, several things will occur prior to permission being granted to the requesting state to take temporary custody of the prisoner;

? First, prison officials will prepare a certificate

of the inmate's status and transmit a copy to the prosecutor in the requesting state;

? Second, since this is to be an involuntary transfer, a pre-transfer hearing will be held at which time the prisoner will be informed of the charges and of his rights under the law, including the right to apply for a writ of habeas corpus; and

? Third, prison officials must wait 30 days after receiving a request before formally acting up it, in order to allow the Governor of Georgia an adequate opportunity to disapprove the request or for the prisoner to file an application for a writ of habeas corpus;^{lxxii}

? The prisoner has the right to contest the legality of the request. The court having jurisdiction over the prisoner must give the prisoner an opportunity to file an application for a writ of habeas corpus. The proceedings to hear the writ challenging a request for custody of the prisoner are conducted in a similar manner as those used to hear a challenge to an extradition request. The prisoner has the right to file a certificate of probable cause to appeal a denial of his request for a writ of habeas corpus to the Georgia Supreme Court;

? As in an extradition case, once permission for temporary custody is granted, agents designated to pick up the prisoner for the requesting state must be identified. Once the prisoner has been received in the state lodging the detainer, he or she must be tried within 120 days unless a reasonable continuance has been granted by a court having jurisdiction to try the prisoner in that state; and

? On completion of the trial and sentencing in the other state, the prosecutor in that state must notify Georgia's Agreement Administrator of the disposition of the case and arrange for the return of the prisoner at the earliest practical time. If, after completing the sentence in Georgia, the prisoner must be

extradited back to the requesting state to complete the subsequent sentence there, he is then transferred back to the requesting state.

From the time that a member state has taken custody of the prisoner pursuant to the Agreement and until such time as he is returned to Georgia, the receiving state is responsible for the prisoner and must pay all transportation costs, lodging, meals, medical costs and other costs for the care of the prisoner.^{lxxiii} During the time that the prisoner is in the receiving state and awaiting trial pursuant to his transfer to the receiving state, he must receive credit for time served on his Georgia sentence.^{lxxiv}

Section Four:

Anti-Shuttling Protections

Regardless of whether the disposition of charges is initiated by the prisoner or by a prosecutor, the Agreement contains anti-shuttling provisions. These provisions require that once a prisoner is returned to a state to stand trial, the prisoner must be tried on all outstanding charges within the requesting states for which detainers have been lodged and that these trials must commence within the time constraints specified in the Agreement as enacted by the Georgia legislature.^{lxxv}

The United States Supreme Court has dealt with the anti-shuttling aspects of the Agreement and has ruled that even a one day return to the original state by the receiving state without disposing of the charges against the prisoner will be grounds for a dismissal of all pending charges.^{lxxvi} An excellent example of the force of this provision can be seen in the case of a Mr. Bozeman who was serving a federal prison sentence in Florida. A

district attorney in Alabama sought temporary custody of Mr. Bozeman so that he could be arraigned on a state firearms charges and in order to appoint local counsel to represent him in Alabama. Mr. Bozeman was taken from the federal prison in Florida after a detainer was filed pursuant to the Agreement. Mr. Bozeman spent one night in a county jail in Alabama and the next day he was arraigned on the state charges and local counsel was appointed for him. He was returned to the federal prison in Florida on the same day. One month later, he was brought back to Alabama to stand trial on the state charges. His Alabama attorney filed a motion to dismiss the Alabama charges on the basis that his return to federal prison in Florida after his arraignment and prior to the disposition of the state charges was a violation of the Agreement.

The United States Supreme Court held:

[t]he agreement exempts violations that, viewed in terms of its purposes are *de minimus*, the violation here could not qualify as trivial, because the no return provision's purpose cannot be a simple, direct effort to prevent the interruption of rehabilitation. Article IV(e)'s [of the Interstate Agreement on Detainers] requirement that the prisoner remain in the county jail means that he will typically spend 120 days away from the sending states rehabilitation programs, whereas returning him prior to trial in violation of IC(e) would permit him to participate in the sending states program for some of those days. To call such a violation technical, because it means fewer days spent away from the sending state, is to call virtually *every* conceivable antishuttling violation technical. (Emphasis in the original.)^{lxxvii}

The courts in Georgia have also strictly defined the rights of an incarcerated prisoner under the terms and provisions of the Agreement. Particularly the right of

prisoner to a pre-transfer hearing before being taken to another state for a trial. In 1983, the Georgia Supreme Court held that a prisoner incarcerated in Georgia and for whom a detainer has been lodged pursuant to the Agreement is entitled to same the procedural protections of that UCEA--particularly the right to a pre-transfer hearing--before being transferred to another jurisdiction.^{lxxviii}

PART SIX

EXTRADITION OF JUVENILES

Section One:

Juveniles and Extradition

The Article IV of the United States Constitution and the federal legislation governing extradition make no special provisions for juveniles. Georgia case law, at least by implication if not expressly, recognizes that juveniles may be extradited the same as adults.^{lxxix} In one case,^{lxxx} the Georgia Supreme Court refused to extradite 15 year-old Karen Lynn Batton to North Carolina on murder charges, but not because she was a juvenile, but because the juvenile court process for bringing the charges in North Carolina failed to provide the accused with the same Fourth Amendment protections that are provided to an adult. The Georgia Supreme Court found that the North Carolina process failed to adequately, and with due process, charge Ms. Batton with crime. The Court held:

[U]nless a state's procedure is dramatically different from the common law, a determination of probable cause to arrest is necessarily made when an indictment is returned by a grand

jury, or when an arrest warrant is issued by a magistrate. Thus if a copy of either an indictment or an arrest will be made by this state, for in the interest of comity and the expeditious administration of justice we rely on the official representation that probable cause to arrest has been constitutionally found by the demanding state. (Cites omitted.) But in this case no arrest warrant was issued, and no indictment was returned. North Carolina proceeded by a statutory procedure applicable to juveniles which does not appear to require any determination of probable cause to arrest as a prerequisite to the issuance of the documents accompanying the requisition. As far as we can tell, no determination of probable cause was in fact made. Indeed, the statute under which the state proceeded provides procedures for children which are different in purpose and philosophy from the procedures applicable to criminal cases involving adults. (Cite omitted.)^{lxxxii}

Moreover, even though special criminal proceedings may otherwise be required for juveniles, it has been held that such special proceedings are not required when extraditing juveniles.^{lxxxiii} And although extradition proceedings are considered necessary for juvenile criminal fugitives just as for adults, it has been held that no formal proceedings are necessary to return a minor to his guardian. Also, as in the case of adults, it has been held that the power of a state to try a juvenile is not affected by the manner of his return to another state. In short, the regularity of extradition proceedings may be attacked only in the asylum state.

Section Two:

Juvenile Justice Law in Georgia

In order to better understand the juvenile extradition process, a brief review of black letter law relating to juveniles is in order. In Georgia, because the jurisdiction for juvenile

offenses is the original and exclusive jurisdiction of the juvenile courts, no criminal charges or indictments of child is permitted without special operation of law. A child is defined by Georgia law as any individual who is: (a) Under the age of 17 years; (b) Under the age of 21 years, who committed an act of delinquency before reaching the age of 17 years, and who has been placed under the supervision of the court or on probation to the court; or (c) Under the age of 18 years, if alleged to be a deprived child.^{lxxxiii} Delinquent child means a child who has committed a crime under the laws of Georgia or another state (if the crime occurred in the other state) and is in need of treatment and rehabilitation.^{lxxxiv} A person shall not be considered or found guilty of a crime unless he has attained the age of 13 years at the time of the act, omission, or negligence constituting the crime.^{lxxxv}

A deprived child is any child who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health or morals; has been placed for care or adoption in violation of law; has been abandoned by his parents or other legal custodian; or is without a parent, guardian, or custodian.^{lxxxvi}

The law is very specific regarding the transfer, for the purposes of prosecution, of a child to Superior Court by the Juvenile Court. There is an age limitation for transfer B 15 years of age at the time of the delinquent offense. It should be noted that a child 13 to 17 years of age may be prosecuted in Superior Court without the need for transfer by the Juvenile Court for the following offenses: murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, and armed

robbery, if committed with a firearm. Additionally, a child who is 13 or 14 years of age and has committed aggravated battery resulting in serious bodily injury to a victim, may be prosecuted in Superior Court upon transfer from the Juvenile Court.^{lxxxvii}

A child alleged to be delinquent may be detained only in a licensed foster home or a home approved by the court which may be a public or private home or the home of the non-custodial parent or of a relative; a facility operated by a licensed child welfare agency; a detention home or center for delinquent children is under the direction or supervision of the court or other public authority or of a private agency approved by the court.

A child charged as an adult and transferred to the Superior Court by the Juvenile Court or who is under the jurisdiction of the Superior Court may not be removed from a place of detention as required by law unless it appears to the satisfaction of the Superior Court that public safety and protection reasonably require detention in a jail and the court so orders, but only where the detention is in a room separate and removed from those for adults and constructed in such a way that there can be no physical contact between a child and an adult offender.^{lxxxviii}

Section Three:

Interstate Compact on Juveniles

Before a juvenile whose charges would allow for criminal prosecution can be extradited pursuant to the UCEA, however, states must still deal with those juveniles against whom criminal charges have not been placed and for whom requests are made by demanding states. In the early 1950's, Parade magazine published a series of articles entitled "Nobody's Children," which presented stories about runaway children in America. Inspired by these stories a group of organizations, including the Council of State Governments, the National Council on Crime and Delinquency, and the National Council of Juvenile and Family Court Judges, recognized that action was needed. These organizations developed a uniform set of procedures to facilitate the return of juveniles who ran away to other states and to create a system in which juvenile offenders could be supervised in other states. This group, along with other groups, drafted the Interstate Compact on Juveniles (Compact). The Compact was finalized in January 1955 and was ratified by all 50 States, the District of Columbia, the Virgin Islands, and Guam by 1986.^{xc}

The Compact is a multi-jurisdictional agreement that provides the procedural means to regulate the movement across state lines of juveniles who are under court supervision. Specifically, the Compact is a legal contract among the ratifying that provides for the monitoring and/or return of any juvenile who:

?Has run away from home without the consent of a parent or legal guardian.

?Is placed on probation or parole and wants to reside in another jurisdiction;

?Has absconded from probation or parole or escaped from an institution and has fled to another jurisdiction;

?Requires institutional care and specialized services in another jurisdiction; or

?Has a pending court proceeding as an accused delinquent, neglected, or dependent juvenile and runs away to another jurisdiction.^{xc1}

The Interstate Compact on Juveniles requires the Governor of Georgia to appoint a Compact Administrator.[@] The Compact Administrator has the responsibility of developing and promulgating rules and regulations which will effectively carry out the policies and provisions of the compact. With regard to those juveniles who are charged with criminal acts, the Compact provides:

[A]ll provisions and procedures of Articles V and VI of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being delinquent by reason of a violation of any criminal law. Any juvenile, charged with being delinquent by reason of violating any criminal law, shall be returned to the requesting state upon a requisition to the state wherein the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of the compact shall be forwarded by the judge of the court in which the petition is filed.^{xcii}

PART SEVEN

OTHER ACTIONS INVOLVING THE TRANSFER OF PERSONS BETWEEN STATES

There are a number of instances other than criminal charges and runaway delinquent juveniles that require some form of interstate transfer of persons. Parolees from one state living in another state, individuals who have absconded from parole supervision, persons who desire to serve their prison sentence from another state in Georgia, and United States Military Personnel are just a few examples of people who may have special instances of interstate transfer.

Section One:

Uniform Act for Out-of-State Parole Supervision

A number of courts across the nation have held as valid pre-release agreements by a signed by persons accepting a parole status. These pre-release agreements with the waiver of extradition clauses allows the parolee to be returned to the demanding state from an asylum state without any of the formalities of the extradition process.^{xciii} The Uniform Act for Out-of-State Parolee Supervision allows, with permission of the sentencing state, any person convicted of an offense within one state and placed on probation or parole to reside in another state while serving his sentence on parole or probation. Certain conditions must be met before permission will be granted. Those conditions are:

?Such person must be a resident of the receiving state or must have his family residing in the receiving state and can obtain employment in that state.

A resident of a state is defined, for the purposes of this Act, as being a person who has been an actual inhabitant of the receiving state continuously for more than one year prior to coming to the sending state and has not resided within the sending state more than six continuous months immediately proceeding the commission of the crime for which he is serving his sentence.

?If that person is not a resident of the receiving state and does not have family in that state, the receiving state may consent to that person coming into that state to serve his parole or probationary period there.

Before permission can be granted, the receiving state must have an opportunity to investigate the home and the prospective employment of the person requesting permission to serve his sentence there. If the person meets the requirements and the receiving state grants permission for him to serve the sentence in that state, the receiving state will assume the duties of visitation and supervision of the parolee or probationer. However, the sending state may enter the receiving state at any time and apprehend and retake any person who has been granted permission to serve his parole or probated sentence in the receiving state. No formalities or judicial proceedings are required for the sending state to come into the receiving state and retake the parolee or probationer other than:

[e]stablishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state: Provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.^{xciv}

Section Two:

Interstate Corrections Compact

Georgia has adopted the Interstate Corrections Compact which allows an inmate

convicted in one state to be sent for confinement to another state. If two states elect to enter into a contract for the confinement of inmates the contract must provide:

? The duration of the contract, which can be the length of the sentence or lesser period of time;

? Payments to be made to the receiving state by the sending state for the inmates care and maintenance;

? The type of rehabilitation, educational programs, work programs, or correctional services which the inmate is to receive; and

? Such other matters as may be necessary and appropriate to fix the obligations and responsibilities of the sending and receiving states.^{xcv}

Section Three:

Uniform Interstate Family Support Act

Georgia has also adopted and become a member state of the Uniform Interstate Family Support Act.^{xcvi} This Act provides the Governor of Georgia with the authority to extradite or to transfer to another state anyone found in Georgia if that person has been criminally charged in the other state with having failed to provide for the support of another person after having been required by court order to provide such support. The Act is reciprocal and the Governor of Georgia has the right to request that the executive authority of another member state return a person to charge if that person has been charged with failing to provide court ordered support to a person in Georgia.^{xcvii}

Section Four:

Uniform Act to Secure Attendance of Witnesses

The Uniform Act to Secure the Attendance of Witnesses from Without the State is another interstate uniform agreement to which Georgia is a party.^{xcviii} The Act gives a court the authority to summon out of state witnesses and order reimbursement of their travel expenses. The terms and provisions of this Act also allows for the transfer to Georgia a person who is confined in a prison in another state. The Act provides that a person confined in a prison or in custody in another state is a material witness in a criminal action pending in Georgia or if there is a grand jury investigation in Georgia, a judge of the court may certify that there is such a criminal proceeding or an ongoing investigation by a Georgia grand jury. The Georgia judge must also certify that the person who is confined in another state a material witness in the proceeding, investigation, or action, and that his presence will be required during a specified time. The certificate must be presented to a judge of a court of record in the other state having jurisdiction over such person. Notice must also be given to the attorney general of the other state at the time the certification is presented.

The court in the other state must be issue appropriate orders directing that the person be transferred to Georgia.^{xcix} Any person transferred to Georgia pursuant to the provisions of the Uniform Act to Secure Attendance of Witnesses can not be subjected to arrest or the service of civil or criminal process while in the state for any matters which arose prior to being transferred to Georgia pursuant to this Act.^c

CONCLUSION

The demand for the extradition of an accused person is a critical step in the initiation of a criminal prosecution. However, the United States Constitution and federal legislation do not confer specific rights to an accused person with regard to his extradition between the United States and foreign nations or between individual states. The United States Supreme Court has interpreted the provisions of Article IV, Section 1 and 2 as conferring rights to the individual states, but not to individuals.

The concepts of comity and full-faith and credit address the rights of the courts and law enforcement agencies and officials in the demanding states and the asylum states. These concepts, as applied to extradition, do not confer rights to individuals accused of a crime. It is this underlying premise which prevents an accused from challenging, in the asylum state, the basis for the charges against him. It is this underlying premise which also prevents an accused from challenging his transfer from the asylum state to the demanding state on the grounds that the punishment to which he might be subjected is cruel or unusual. In short, it appears, at first glance, that the accused is left with precious little protection in an extradition proceeding.

However, Article V, like every other provision of the U.S. Constitution, can not be viewed in isolation and without regard to the other provisions in the document. The Full-Faith and Credit provisions and the concept of comity between the states and the federal government certainly speak to the rights of individual states to prosecute violations of state laws and to secure the presence of those accused of crimes. However, the prosecution of a person accused of crime must be consistent with those paramount

provisions of the Constitution which protect the individual rights of persons facing prosecution by either the federal or state governments.

Therefore, the criminal defense attorney must protect the rights of the accused in an extradition proceeding just as surely as in any other criminal proceeding. A person's Sixth Amendment right of counsel, his Fourth Amendment right against unlawful seizures, his Fifth Amendment right to due process and his Fourteenth Amendment right of equal protection must not be abrogated or ignored by the individual states because of the rights conferred to those states by Article IV of the Constitution.



DEFENSE COUNSEL'S EXTRADITION CHALLENGE CHECKLIST

- G** Counsel should determine the legal basis, both in domestic law and, in the case of an international extradition, the applicable treaty to support the request for extradition.
- G** Counsel must discuss with the accused person his rights to waive extradition and return to the demanding state.
- G** Counsel should prepare and verify the documentation submitted by the demanding state in support of the extradition request.
- G** Counsel should determine if the charges or allegations brought before the appropriate court in the demanding state are based upon an indictment, accusation or arrest warrant.
- G** Counsel should determine if the manner of charging the individual comport with constitutionally required due process guarantees. Was a probable cause hearing held in the demanding state? Were the charges made upon the filing of a sworn affidavit?
- G** Counsel must verify all information available which reflects upon the identity of the accused person. Verify all other information which goes to identifying the accused person as the person being sought in the extradition documents.
- G** Counsel must ascertain the name of the person who has legal custody of the accused person, i.e., warden, sheriff, or federal marshal, and notify that individual of counsel's representation of the accused person.
- G** Counsel should obtain a copy of the NCIC and GCIC reports reflecting any arrest record involving the accused person in the demanding state or in any other state.
- G** If the accused person elects not to waive a challenge to the extradition proceedings, counsel should prepare and file a Petition for a Writ of Habeas Corpus in the Superior Court of the County where the accused is being held.

- G** Counsel should prepare a motion to have the accused person released on bond.
- G** Counsel should file a formal request for adequate time to prepare and present evidence supporting the Application for a Writ of Habeas Corpus.
- G** Counsel should present all legal challenges to the Extradition Request to the Superior Court and require that an adequate written record be compiled of the proceedings, including all documentation supporting the extradition request and any documentation submitted in opposition to the extradition request.
- G** If the Superior Court declines to issue a Writ of Habeas Corpus, counsel should file a motion to stay all extradition proceedings until the completion of all appeals to the Georgia Supreme Court.
- G** Counsel should request the complete record of the hearing on Application for a Writ of Habeas Corpus be forwarded immediately to the Georgia Supreme Court. Notice of the filing of a Certificate for Probable Cause should be filed with the Clerk of the Superior Court and with the Georgia Supreme Court.
- G** Counsel should file all necessary briefs in the Georgia Supreme Court which support the Certificate for Probable Cause.
- G** If the Georgia Supreme Court denies the application for an appeal, counsel should contact the accused person's attorney (if known) in the demanding state and forward the entire record and file to that attorney.

DEFENSE COUNSEL-S
CHECKLIST FOR A WRIT OF HABEAS CORPUS:
EXTRADITION CHALLENGE

The Application for a Writ of Habeas Corpus filed to challenge an extradition arrest warrant must be in writing. The Application must sworn to and signed by the accused person for whom an extradition request has been made. The Application for a Writ of Habeas Corpus should contain the following matters:

? A description of where and by whom the accused is being held or deprived of his liberty;

? The facts and circumstances of the restraint of the accused person;

? The form of the relief sought; and

? The grounds upon which relief is sought.

? The grounds for relief are limited to:

? Whether the extradition documents on their face are in order;

? Whether the applicant for the Writ of Habeas Corpus has been charged with a crime in the demanding state;

? Whether the applicant is the actual person named in the request for extradition;

? In some instances, whether the applicant is a fugitive must be addressed. See O.C.G.A. Section 17-13-25.

? The original Application for a Writ of Habeas Corpus must be filed with the Clerk of the Superior Court in the County in which the accused is being held.

? A notice of the filing of the application along with a copy of the application and the time and place of the hearing on the application must be served upon the prosecuting officer in the county where the application has been filed.

? A notice of the filing of the application along with a copy of the application the time and place of the hearing on the application must be served upon the prosecuting officer in the county in which the arrest of the accused was made, if different from the place of custody.

? A notice of the filing of the application along with a copy of the application the time and place of the hearing on the application must be served upon the demanding state's designated agent.

? The prosecuting attorney in the county where the accused is being held must file and answer to the application and defend the governor's extradition arrest warrant.

? The Governor of Georgia may, in his discretion, direct the Attorney General of Georgia to file an answer to the application.

? If the application for a Writ of Habeas Corpus is denied, counsel for the accused person must file a written application for a certificate of probable cause to appeal with the clerk of the Georgia Supreme Court within thirty

i. The information concerning extradition treaties comes from the Crime Prevention and Criminal Justice Division of the United Nations. Much of the information available from this division of the United Nations has been developed as part of the research and work of Professor Mahesh K. Nalla of Michigan State University.

ii. O.C.G.A. Section 17-13-4.

iii. 65 U.S. (24 How.) 66.

iv. Id.

v. 48 Stat. 782, 18 U.S.C. Sec. 1073.

vi. 18 U.S.C. Section 1073 (Flight to avoid prosecution or giving testimony).

vii. Puerto Rico v. Branstad, 483 U.S. 219 (1987).

viii. Id.

ix. Minchew, Kaye Lanning, *How Hollywood Reformed The Georgia Prison System*, Georgia Journal, Spring 1992.

x. O.C.G.A. Section 17-13-1.

xi. O.C.G.A. Section 17-13-3.

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- xii. O.C.G.A. Section 17-13-48.
- xiii. 231 Ga. 820, 204 S.E.2d 630 (1974).
- xiv. 1958-59 Op. Att’y Gen. P. 251.
- xv. O.C.G.A. Section 17-13-22.
- xvi. 244 Ga. 548, 261 S.E.2d 342 (1979).
- xvii. Id.
- xviii. 214 Ga. 388, 104 S.E.2d 907 (1958).
- xix. Id.
- xx. 256 Ga. 844, 353 S.E.2d 345 (1987).
- xxi. Id.
- xxii. O.C.G.A. Section 17-13-26.
- xxiii. See Lively v. Fulcher, 244 Ga. 771, 262 S.E.2d 93 (1979).
- xxiv. Hooten v. State, 245 Ga. 250, 264 S.E.2d 192, cert. denied, 446 U.S. 942 (1980).
- xxv. O.C.G.A. Section 17-13-29.
- xxvi. O.C.G.A. Section 17-13-27.
- xxvii. Wollweber v. Martin, 226 Ga. 20, 172 S.E.2d 605 (1970).
- xxviii. Baldwin v. Grimes, 216 Ga. 390, 116 S.E.2d 207 (1960).
- xxix. O.C.G.A. Section 17-13-30(a).
- xxx. O.C.G.A. Section 17-13-30(b).
- xxxi. O.C.G.A. Section 17-13-33.
- xxxii. Ledesma v. State, 251 Ga. 487, 306 S.E.2d 629 (1983), cert. denied, 464 U.S. 1069 (1984).
- xxxiii. O.C.G.A. Section 17-13-34.
- xxxiv. O.C.G.A. Section 17-4-20.
- xxxv. 211 Ga. 335, 85 S.E.2d 753 (1955); See also Wheeler v. Stynchcombe, 234 Ga. 240, 215 S.E.2d 244

(1975).

xxxvi. Id.

xxxvii. O.C.G.A. Section 17-13-35.

xxxviii. Id.

xxxix. O.C.G.A. Section 17-13-36.

xl. O.C.G.A. Section 17-13-37.

xli. Stynchcombe v. Whitley, 240 Ga. 776, 242 S.E.2d 720 (1978).

xlii. O.C.G.A. Section 17-13-39.

xliii. Id.

xliv. Id.

xlv. Id.

xlvi. O.C.G.A. Section 17-13-31.

xlvii. O.C.G.A. Section 17-13-40.

xlviii. Hutson v. Stoner, 244 Ga. 52, 257 S.E.2d 539, cert. denied, 444 U.S. 967 (1979).

xlix. O.C.G.A. Section 9-14-52(a) & (b).

l. O.C.G.A. Section 9-14-52 (c).

li. O.C.G.A. Section 17-13-46 (a).

lii. O.C.G.A. Section 17-13-46 (b).

liii. 1958-59 Op. Att’y Gen. p. 252.

liv. O.C.G.A. Section 17-13-47.

lv. See O.C.G.A. Section 42-6-20.

lvi. United States v. Mauro, 436 U.S. 340, 343 (1978).

lvii. Id. at 359 (citations omitted); see also Cuyler v. Adams, 449 U.S. 433, 436 n.3 (1981).

lviii. See, Mauro, supra, at 436 U.S. at 358, 364 n.29; Carchman v. Nash, 473 U.S. 716, 719 (1985); Fex v.

Michigan, 504 U.S. 908 (1993); Reed v. Farley, 510 U.S. 963, n.1 (1994).

lix. United States v. Dixon, 592 F.2d 329, 332 n.3 (6th Cir. 1979).

lx. O.C.G.A. Section 42-6-70, Article I; see also United States v. Ford, 550 F.2d 732, 737-40 (2d Cir. 1977) (recounting abuse of the detainer system prior to the existence of the IAD).

lxi. S. Rep. No. 1356, 91st Cong., 2d Sess. 3 (1970), reprinted in 1970 U.S. Code Cong. & Admin. News 4864, 4866.

lxii. See Mauro, 436 U.S. at 340 (citation and internal quotation marks omitted).

lxiii. O.C.G.A. Section 42-6-20, Article VII.

lxiv. O.C.G.A. Section 42-6-20.

lxv. Id.

lxvi. Id.

lxvii. O.C.G.A. Section 42-6-20, as amended July 1, 2000.

lxviii. Clater v. State, 266 Ga. 511, 467 S.E.2d 537 (1996).

lxix. Thompson v. State, 186 Ga.App. 379, 367 S.E.2d 247, cert. denied, 186 Ga. App. 919, 367 S.E.2d 247 (1988).

lxx. O.C.G.A. Section 42-6-20, Article III.

lxxi. O.C.G.A. Section 42-6-20, Article III(e).

lxxii. O.C.G.A. Section 42-6-20, Article III(a).

lxxiii. O.C.G.A. Section 42-6-20, Article V(h).

lxxiv. O.C.G.A. Section 42-6-20, Article V(f).

lxxv. O.C.G.A. Section 42-6-20, Article V(e).

lxxvi. Alabama v. Bozeman, 533 U.S. 146, 121 S.Ct. 2079, 150 L.Ed.2d 188 (2001).

lxxvii. Id.

lxxviii. Lambert v. Jones, 250 Ga. 603, 299 S.E.2d 716 (1983).

lxxix. 31 Am Jurisprudence 2d, Extradition ' ' 14-16.

lxxx. Batton v. Griffin, 240 Ga. 450, 241 S.E.2d 201(1978).

lxxxi. Id.

lxxxii. See 31 Am Jurisprudence 2d, Extradition ' 74.

lxxxiii. O.C.G.A. Section 15-11-2.

lxxxiv. O.C.G.A. Section 15-11-2.

lxxxv. O.C.G.A. Section 16-3-1.

lxxxvi. O.C.G.A. Section 15-11-2.

lxxxvii. O.C.G.A. Sections 15-11-30.2 and 15-11-30.3.

lxxxviii. See O.C.G.A. Section 15-11-48.

lxxxix. An Interstate Compact is an agreement entered into by and among the contracting states.

xc. Holloway, Christopher, *Interstate Compact on Juveniles Series: Fact Sheet*, Office of Juvenile Justice and Delinquency Prevention, September 2000.

xc. See O.C.G.A. Section 39-3-2, Article I.

xcii. O.C.G.A. Section 39-3-2, Article XVI(b).

xciii. See Uniform Act for Out-of-State Parole Supervision.

xciv. Id.

xcv. O.C.G.A. Section 42-11-2, Article III.

xcvi. O.C.G.A. Section 19-11-185

xcvii. Id.

xcviii. O.C.G.A. Section 24-10-90.

xcix. O.C.G.A. Section 24-10-95.

c. O.C.G.A. Section 24-10-96.