# Virginia Extradition Manual

## Secretary of the Commonwealth
## Commonwealth of Virginia
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The *Virginia Extradition Manual* is available from the Secretary of the Commonwealth,
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# CHAPTER 1

# OVERVIEW OF THE MANUAL

Extradition has a long and distinguished history. The U.S. system of extradition is empowered by the U.S. Constitution and is administered under applicable federal and state law. In Virginia, the provisions governing extradition procedures are set forth in Sections 19.2 through 19.2-118 of the *Code of Virginia* (1950) as amended.

While the concept of extradition is easily understood, the procedures to be followed in any particular extradition case can become quite complex. This is due to the myriad of legal issues associated with extradition, the number of actors involved in the extradition process, and the fact that each extradition case is unique. This manual is designed to help guide state and local officials through this process.

The manual is divided into four distinct but interrelated parts. Part I is designed to provide the reader with an introduction to both the manual and to the extradition process as practiced within the Commonwealth.

Part II is concerned with legal issues. It contains chapters dealing with the following subjects: sources of law, extraditable offenses and the interstate agreement on detainers. This part is supplemented by several appendices, which are also concerned with legal issues. Appendix A provides a series of sample formats, which can be used by Virginia officials in performing extradition actions. Appendix C of the manual contains relevant excerpts of the *Code of Virginia,* the document which governs extradition practice within the Commonwealth. Appendix D provides definitions of legal terms and acronyms associated with this subject.

Part III of the manual is, in some respects, the most important. Within its five chapters are detailed discussions of the roles and responsibilities of major actors involved in the extradition process. Actors discussed include: law enforcement officials, magistrates, clerks of courts, Commonwealth's Attorneys and judges of the district and circuit courts.

Part IV examines extradition cases with require special consideration. Discussed within the two chapters of this section are the extradition of juveniles, parolees, fugitives, military personnel, Native Americans and offenders transferred under the Interstate Compact for Adult Offender Supervision. This section is supplemented by Appendix B, which outlines the special requirements of other states.

While this manual attempts to cover the myriad of issues associated with extradition, questions will nevertheless arise. The Office of the Secretary of the Commonwealth will gladly assist Virginia officials in obtaining the answers to such questions. The office can be reached at (804) 786-2441.

# CHAPTER 2

# THE EXTRADITION PROCESS

Extradition is the legal surrender of an alleged criminal, apprehended in one jurisdiction, to another state, country or other governmental unit for trial. Two distinct processes are used to achieve this end - - one when Virginia is the state of asylum for the fugitive, the other when Virginia is the state from which the fugitive fled, and the Commonwealth is seeking his or her return.

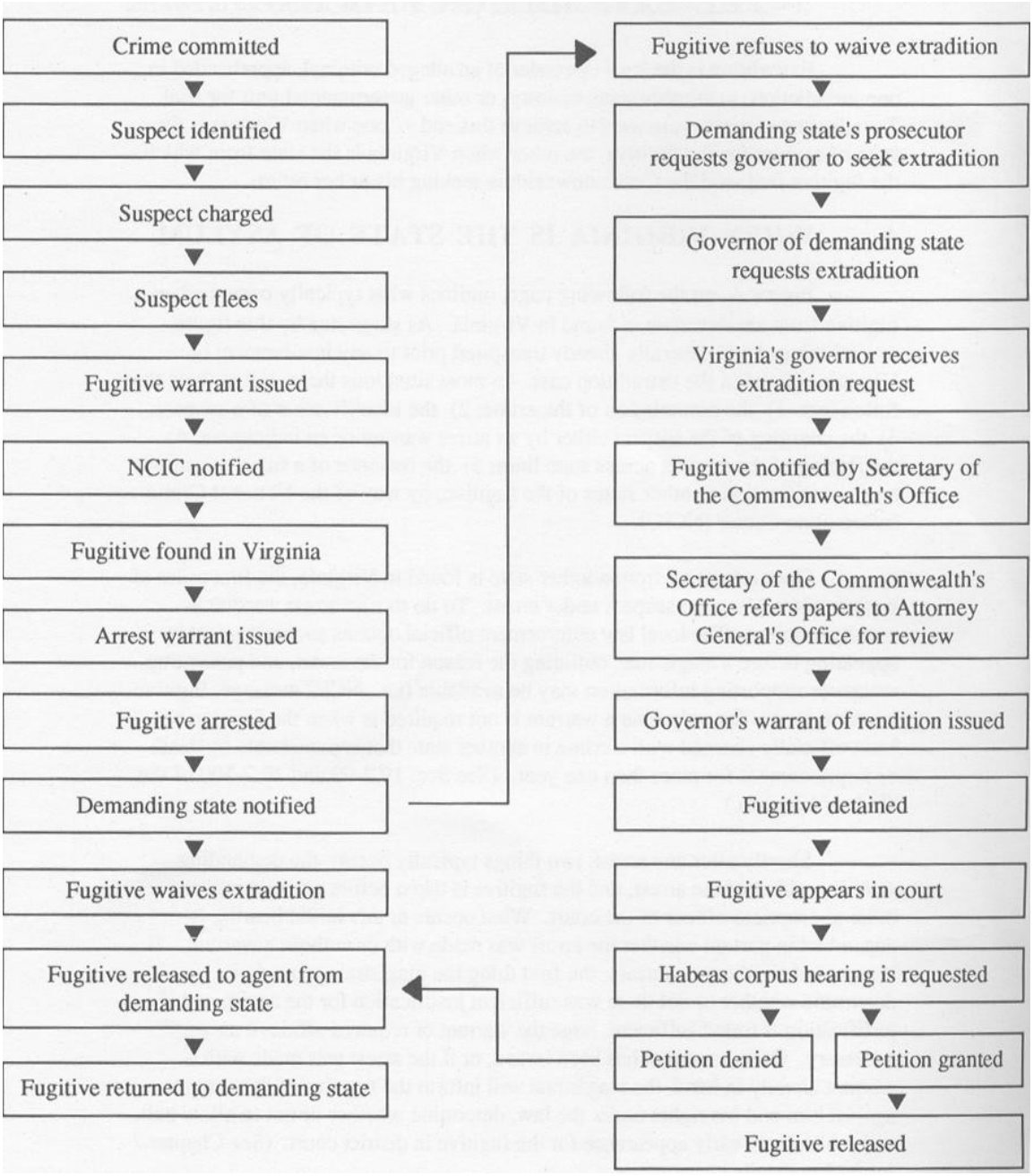
## A. WHEN VIRGINIA IS THE STATE OF ASYLUM

Figure A, on the following page, outlines what typically occurs when a fugitive from another state is found in Virginia. As suggested by this figure, several things have generally already transpired prior to any involvement of a Virginia official in the extradition case. In most situations these will include the following: 1) the commission of the crime; 2) the identification of a suspect; 3) the charging of the suspect either by an arrest warrant or an indictment; 4) the fleeing of the suspect across state lines; 5) the issuance of a fugitive warrant; 6) notification of other states of the fugitive, by way of the National Crime Information Center (NCIC).

Once a fugitive from another state is found in Virginia, the first order of business is to place the suspect under arrest. To do this an arrest warrant is usually required. The local law enforcement official obtains such a warrant by appearing before a magistrate, outlining the reason for the arrest, and presenting whatever supporting information may be available (i.e., NCIC message, fugitive warrant, etc.). The only time a warrant is not required is when the fugitive has been officially charged with a crime in another state that is punishable by death or imprisonment for more than one year. (See Sec. 19.2-99 and 19.2-100 of the *Code of Virginia*.)

Shortly after any arrest, two things typically occur: The demanding state is notified of the arrest, and the fugitive is taken before a magistrate or other appropriated officer of the court. What occurs at this initial hearing dependent in part on whether the arrest was made with or without a warrant. If it was made without a warrant, the first thing the magistrate must do is determine whether or not there was sufficient justification for the arrest, and if justification is found sufficient, issue the warrant or required affidavit as necessary. Once a warrant has been issued, or if the arrest was made with a warrant already in hand, the magistrate will inform the fugitive of the charges against him and his rights under the law, determine whether or not to allow bail, and schedule an early appearance for the fugitive in district court. (See Chapter 7 for further details.)

FIGURE A
FLOW CHART OF THE EXTRADITION PROCESS WHEN A FUGITIVE FROM ANOTHER U.S. JURISDICTION IS FOUND IN VIRGINIA



Details of what will typically occur in District Court are provided elsewhere in this manual. (See Chapter 10.) Suffice it to say that at the first appearance in District Court the judge will, among other things, allow the fugitive the option of waiving extradition. Many fugitives choose this option, knowing that in all likelihood they will be extradited, and by waiving extradition do not delay the inevitable.

If extradition is not waived, another series of steps is necessary. First, the demanding must initiate a formal request for extradition. This request comes from the governor of the demanding state, but is generally based upon information supplied by the local prosecutor of the jurisdiction where the crime was committed. The extradition request should typically include: a copy of the warrant with affidavits or an indictment against the fugitive, a complete application for requisition, copies of the statutes the fugitive is charged with violating, information for the identification of the fugitive (i.e. fingerprints or photos), and required certifications.

Once the complete extradition request is received by the Governor's office, it is forwarded from the Office of the Secretary of the Commonwealth to the Office of the Attorney General, where it is reviewed for legal sufficiency. Two crucial things are looked for: 1) whether the fugitive is, in fact, charged with a crime in the demanding state; and 2) whether the person arrested is the fugitive. The Governor's office will not examine issues of probable cause for the charge. Nor will it consider other defenses such as alibi or self-defense. These issues are considered matters between the fugitive and the demanding state.

Once the Governor's office is satisfied that the demanding state has met the necessary requirements for extradition, a Governor's Warrant is issued. This warrant serves as an authorization for taking the fugitive into custody for the purpose of turning him or her over to the demanding state. In many cases the fugitive will already be in custody because he or she was not released, or could not make bail. If not already in custody he will be placed into it, with his bail revoked pursuant to the Governor's Warrant.

The fugitive cannot immediately be turned over to the demanding state. State law requires that all fugitives must first appear before a judge, who, as specified in the *Code,* must inform the fugitive of the "demand made for his surrender and of the crime with which he is charged," "that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge or trial justice shall fix a reasonable time to be allowed him with which to apply for a writ of habeas corpus (Sec. 19.2-95)." If the fugitive fails to apply for the writ within the specified time limit, he may be turned over to the agent of the demanding state. If the fugitive applies for a writ within the allowable time frame, a hearing is held within Circuit Court. (See Chapter 10.)

The Circuit Court Judge will deny or grant the petition on the writ of habeas corpus based upon findings related to four issues: 1) whether the person is a fugitive; 2) whether the fugitive has been charged with a crime in the demanding state; 3) whether the fugitive is the person named in the request; and 4) whether the extradition documents are in order. If all these tests are passed, the petition will be denied, and the fugitive will be turned over to the demanding state. If any is not, the fugitive may be released.

NOTE: Interstate Compact offenders are not considered fugitives. For more information concerning Interstate Compact offenders, please see Chapter 12-A.

## B. WHEN VIRGINIA IS THE DEMANDING STATE

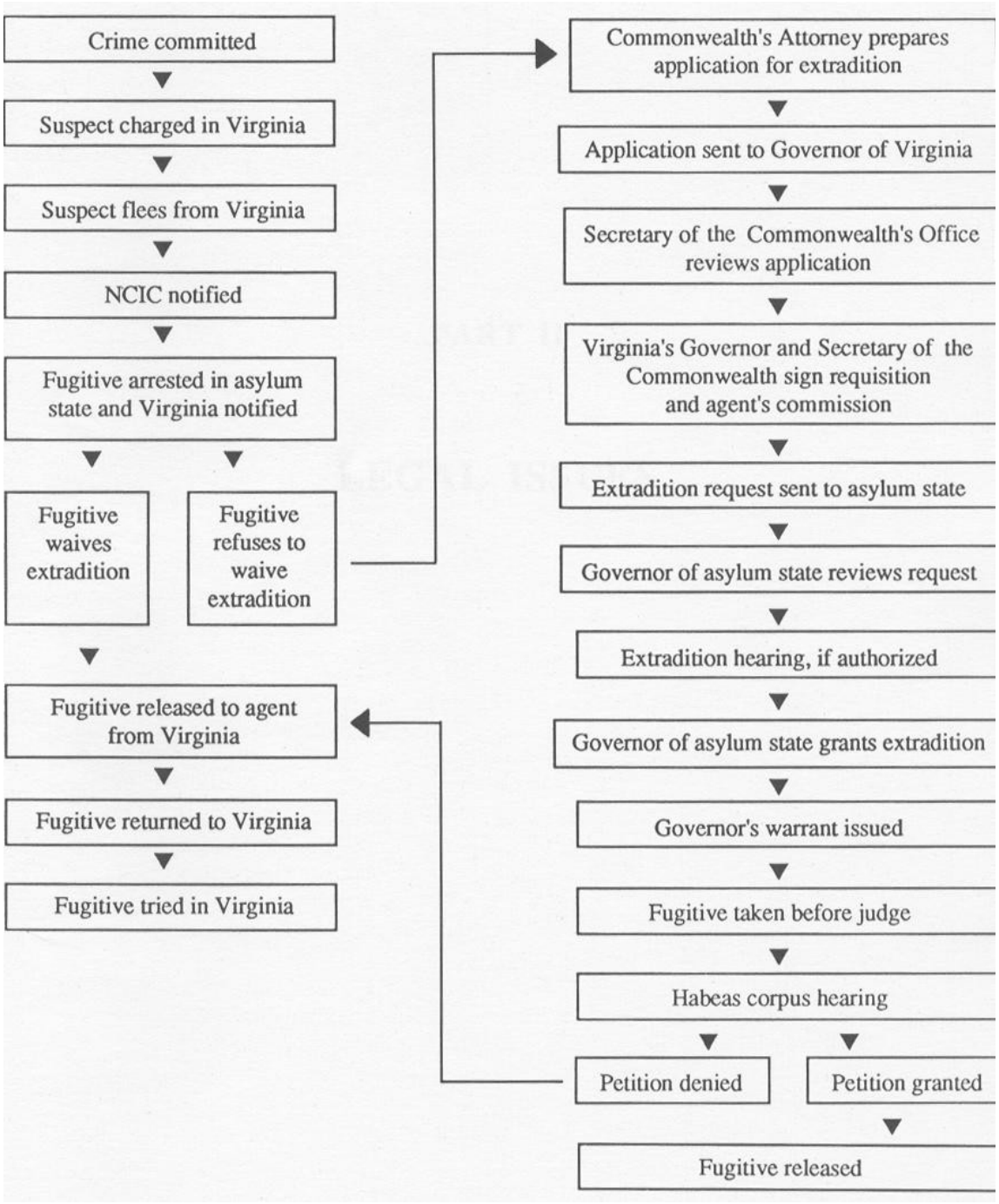
Figure B outlines the extradition process when a fugitive from Virginia is found in another U.S. jurisdiction. As might be expected, very similar procedures take place. Fugitives from Virginia may be extradited regardless of whether the crime committed in this state was a felony or misdemeanor.

Once a fugitive from Virginia has been arrested in another state, the Commonwealth's Attorney of the jurisdiction where the fugitive was charged is notified. As outline in more detail in Chapter 9 of this manual, it is the Commonwealth's Attorney who is responsible for assembling the myriad of documents needed by the Governor's office to request an extradition (assuming that extradition is not waived by the fugitive). The Documents will typically include: copies of the indictment or arrest warrant with supporting affidavit; a statement that the extradition is not being undertaken as a means of enforcing a private claim; fingerprints or photographs; copies of the statues the fugitive is charged with violating; the applicable for requisition, etc. If the extradition issue is related to bail, probation or parole, a judgment order of conviction or a sentencing document, together with an affidavit outlining the circumstance of the violation will be necessary.

All extradition materials are reviewed by the Office of the Secretary of the Commonwealth to ensure that they are complete and comply with the requirements of the asylum state. Once all documents are complete, it is the Governor who formally requests the extradition. Finally, if the extradition is granted, the Governor requests one or more law enforcement officers, designated by the local Commonwealth's Attorney, to retrieve the fugitive.

Procedures for extradition are strikingly similar nationwide. Most states have passed the Uniform Criminal Extradition Act (UCEA), or similar statutes. Nonetheless, practices will vary. The Secretary of the Commonwealth's Office (804-786-2441) is familiar with the special requirements of other states, and should be contacted with any question.

FIGURE B
FLOW CHART OF THE EXTRADITION PROCESS WHEN A FUGITIVE FROM VIRGINIA IS FOUND IN ANOTHER U. S. JURISDICTION



# PART II

# Legal Issues

# CHAPTER 3

## Sources of Law

### A. Interstate Extradition

Interstate extradition is governed by federal law. In Article IV, Section 2, Clause 2, the United States Constitution states:

> 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.

Congress has enacted an implementing statute that details the procedure for executing interstate fugitive extradition requests (18 U.S.C. 3182).

States have the authority to enact legislation dealing with interstate extradition provided the legislation does not conflict with federal law. For example, state law can supplement federal law by addressing areas Congress has not. To help eliminate conflicts among the extradition laws of the various states, as based on the federal statute, a uniform act was first developed in 1926. Most states, including Virginia, have adopted the Uniform Criminal Extradition Act (UCEA), set forth in Sections 19.2-84 through 19.2-118, *Code of Virginia* (1950), as amended. The act details the requirements for interstate extradition and provides for uniformity among the states. It adopts the requirements of federal law and supplements those requirements where Congress has not acted.

NOTE: Three states, Louisiana, Mississippi and South Carolina, have not adopted the UCEA. Consult the Office of the Secretary of the Commonwealth, Richmond, Virginia at (804) 786-2441, when dealing with these states.

**For information concerning offenders transferred under the Interstate Compact for Adult Offender Supervision, please see Chapter 12-A.*

### B. International Extradition

International extradition is governed wholly by federal law and all requests for extradition from foreign countries must be coordinated through the United States Department of Justice, Criminal Division, Office of International Affairs. Requests for the extradition of persons by foreign governments shall be determined in the first instance by a judge or magistrate, but the ultimate decision to extradite is ordinarily a matter for the Executive.

Executives have discretion related to the decision to extradite; they may choose not to extradite an individual where, in the opinion of the judiciary, the individual's constitutional rights would be violated. Contact the Virginia Attorney General's Office, Richmond, Virginia, at (804) 786-0037, prior to addressing an international case.

# CHAPTER 4

# EXTRADITABLE OFFENSES

## A. Criminal

The words "treason, felony and other crime" in the Constitution and federal statutes 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. The accused can, therefore, be extradited when he is charged with any offense that is a crime in the demanding state. The asylum state cannot deny extradition solely because the offense with which the fugitive is charged is not a criminal offense in the asylum state.

The charge against the accused must be a punishable offense in the demanding state. The right to extradite is not based on a determination of guilt, but rather on the fact that the person is charged with a crime. A claim of innocence by the accused is immaterial. Also subject to extradition are those persons convicted and escaped or those who have violated the conditions of their bail, probation or parole.

In certain situation, while the law may allow extradition, civil remedies are the preferred approach for obtaining justice. This is true of cases related to child custody, nonsupport, worthless checks, rental property, and mortgaged property. Please see Section C, below, for a discussion of issues related to these types of cases.

## B. Qualifications

A fugitive'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 or her status as a fugitive from justice. He or she need not be in the asylum state voluntarily to be considered a fugitive (Sec. 19.2-90). If the accused left the demanding state with the knowledge and consent of state authorities, it makes no difference. The person need only have committed or been accused of having committed a crime in the demanding state and been found in the asylum state to be qualified for extradition.

Under the federal statute, the accused must have been in the demanding state when the crime was committed or the person is not a 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 or she intended to result in a crime in the demanding state. For example, the accused may have conspired in Georgia to commit a crime which occurred in Virginia. Virginia can demand extradition of the accused from Georgia as a fugitive from justice even though the person never entered Virginia. The governor of the asylum state has the discretion to deny extradition in such a case, although such a denial is rare.

## C. Matters Where Civil Remedies are Preferred

The extradition process cannot be used to return a person for the enforcement of a private claim or for the collection of a debt. The appropriate Commonwealth's Attorney should be certain that the extradition process is used only for criminal prosecution.

While extradition is possible, it may not be the preferred or appropriate in the following cases:

1. Child Custody – The appropriate Commonwealth's Attorney should require the legal custodian of the child to pursue all available civil remedies before seeking extradition for the transporting of a child out of state in violation of a custody order.

2. Nonsupport – The Uniform Interstate Family Support Act (UIFSA) is the preferred approach for addressing cases related to abandonment, nonsupport, bastardy, etc. Extradition should be requested only after all remedies available under this act have been exhausted. If extradition is requested prior to the utilization of the remedies available under UIFSA, the request should be accompanied by an affidavit from the appropriate law enforcement officer or Commonwealth's Attorney justifying the request.

3. Worthless Checks – Whether or not extradition is the appropriate remedy for the writing of bad checks depends on the nature of the offense. Extradition should not be sought unless: a) the check or aggregate checks totaled more than $100.00; b) the check was written on a closed or nonexistent account; or c) the case involved forgery or a similar offense.

4. Rental Property – The appropriateness of utilizing extradition for cases involving rental property, again, depends upon the nature of the offense. Where the individual fails to return rental property, but there does not appear to be an attempt to steal, the incident should be handled as a civil matter. Where it is clear that the intent was to deprive the owner of the property and then immediately leaves the state, larceny may be the appropriate charge and extradition could be an appropriate remedy.

4. Mortgaged Property – Extradition is rarely the appropriate remedy in cases involving mortgaged property. These cases should routinely be handled as civil matters, regardless of the amount of money involved. This is particularly true if the defendant has made regular payments on the merchandise in question. If the case involves an attempt to defraud, then extradition may be appropriate. This might be the case in a situation where property was purchased and the defendant immediately left Virginia with no payments being made on the item.

# CHAPTER 5

# INTERSTATE AGREEMENT ON DETAINERS

On occasion a fugitive from one state may be found under detention in another state. To facilitate the orderly and expeditious disposition of justice in this situation, 48 states and the District of Columbia have entered into a compact known as the "Interstate Agreement on Detainers," or IAD (See Sec. 53.1-210 of the *Code of Virginia*).

The IAD provides a mechanism by which prisoners in one jurisdiction can be brought to trial on outstanding charges in another jurisdiction in a timely fashion. The process is activated by the lodging of a detainer with the facility in which the fugitive is incarcerated. Once the detainer has been lodged, an early trial may be prompted by either the prisoner or the prosecutor for the jurisdiction in which the charges are outstanding.

## A. Prisoner Requested Action

When a detainer is lodged against a prisoner, prison officials are required to notify the prisoner of:

1. the existence of the detainer
2. its source
3. the nature of the charges
4. his or her rights under the IAD

Once notified, the prisoner may invoke the provisions of the IAD, and request the disposition of outstanding charges (See Article III (c) of Sec. 53.1-210 of the *Code of Virginia*). This is typically accomplished in a seven-step process:

1. The prisoner advised the warden of his or her desire to invoke the IAD to obtain final disposition of the outstanding charges.

2. The prisoner signs appropriate forms requesting disposition of such charges.

3. Prison officials promptly forward the request to the prosecutor(s) of the jurisdiction(s) who filed the detainer(s), together with a certificate of the inmate's status and an offer of temporary custody.

4. The affected prosecutor immediately notifies the prison of his or her acceptance of the offer of temporary custody.

5. When notified that all legal proceedings have concluded in the sending state, an agent is dispatched to take the prisoner into custody.

6. Within 180 days of the time the prosecutor received the prisoner's request for disposition and the required supporting documents, the prisoner must be brought to trial. As specified in the

*Code of Virginia*, "the court having jurisdiction of the matter may grant any necessary or reasonable continuance." Failure to prosecute any charges(s) pending against the prisoner within the 180-day period or an extended deadline results in dismissal of the charge(s).

7. Following the court proceedings within the receiving state, the prosecutor notifies the institution from which the prisoner was obtained and other appropriate officials in the sending state, of the disposition of the case and arranges for the prisoner's return.

By requesting disposition of outstanding charges, the prisoner waives extradition to the receiving state to stand trial on any outstanding charges. Moreover, he or she waives extradition to serve any prison term imposed in the receiving state once the sentence has been completed in the state where he or she was originally confined.

**B. Prosecutor Initiated Action**

As suggested earlier in this chapter, the prosecutor for a jurisdiction where charges are outstanding may use the IAD for the purpose of obtaining temporary custody of a prisoner from the state where he or she is being held. Once the detainer has been lodged and the prisoner appropriately notified, the procedure used to obtain custody typically consists of six steps:

1. The prosecutor for the jurisdiction with outstanding charges must prepare a formal request for temporary custody and submit copies to the prisoner, the institution in which the prisoner is incarcerated, and the Agreement Administrator of the sending state. The request must be signed by the prosecutor and certified by a local judge. Further, it should be accompanied by supporting materials including: certified copies of the complaint, information or indictment; the arrest warrant, etc.; and documents identifying the fugitive (i.e., fingerprints, photographs, a physical description).

2. Once the request is received in the sending state, several things will occur prior to permission being granted for the receiving state to take temporary custody. First, prison officials will prepare a certificate of the inmate's status and transmit a copy to the prosecutor. Second, since it is an involuntary transfer, a pre-transfer hearing will be held at which 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. Third, prison officials will wait 30 days after receiving a request before formally acting on it, in order to allow the sending state's governor adequate opportunity to disapprove it. Assuming that the transfer is not disapproved by the governor, nor barred by the courts, temporary custody will be offered.

3. As in the extradition case, once permission for temporary custody is granted, agents must be identified by the appropriate prosecutor to retrieve the prisoner. (See Chapter 9 of this manual.) As a matter of practice, only Virginia law enforcement officers should be used for this purpose. Moreover, an agent of the same sex as the prisoner should be used.

4. As specified in Article IV of Section 53.1-210 of the *Code of Virginia*, once the prisoner has arrived in Virginia to stand trial, the trial should commence within 120 days. As

reasonable continuance beyond this 120 days may be granted by the court having jurisdiction over the matter, for good cause.

5. On completion of the trial and sentencing, the prosecutor must notify both the institution where the prisoner was previously confined and the States' 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 within the state where he or she was originally confined, the prisoner has an unfinished sentence in another state, the prisoner must be extradited to complete the subsequent sentence. This is accomplished utilizing the procedures outlined elsewhere within this manual.

## C. Anti-Shuttling Requirements

Regardless of whether the disposition of charges is initiated by the prisoner or by a prosecutor, the IAD 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 that state for which detainers have been lodged and that these trials must commence within the time constraints specified within the preceding sections. (See Articles III and IV of Sec. 53.1-210 of the *Code of Virginia*.) Further, as specified in the *Code*, "If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice" (Article III (d); see also Article IV (e)).

## D. Further Considerations

Appropriate sections of the *Code of Virginia* should be consulted for any IAD-related case. (See Appendix C of this manual.) Two other resources are also available: the Virginia Attorney General's Administrator for the Interstate Agreement on Detainers, and the Virginia Department of Correction's Detainer Clerk. The Administrator (804-786-0046) can provide additional information on legal requirements, and the Detainer Clerk (804-674-3165) can provide guidance on the forms and processes to be used in detainer proceedings.

# PART III

# ROLES AND RESPONSIBILITIES

# CHAPTER 6

# THE LAW ENFORCEMENT OFFICER

State and local law enforcement officers are involved with extradition in at least two ways: 1) when arresting a fugitive from another state; and 2) when seeking the return to Virginia of a fugitive found in another state.

## A. Arresting a Fugitive from Another State

In arresting a fugitive from another state the officer must first determine that the individual in question is, in fact, a fugitive. (See Sec. 19.2-87 of the Code of Virginia.) This is typically done by receipt of a message from the National Crime Intelligence Center (NCIC) or, less often, by a telephone call, telegram, or letter from an official of the demanding state. Information on the status of the fugitive has to be verified before the actual arrest is made in order to avoid making an arrest on potentially outdated information. This can be accomplished through the NCIC or through direct communications with the appropriate official in the jurisdiction demanding the return of the fugitive.

Fugitives may be of a variety of types, including: individuals charged with a crime in another state by a warrant or indictment; Individuals who have escaped from imprisonment following a conviction; as well as individuals who have violated bail restrictions, probation or parole. In some instances a suspect may be arrested even before being officially charged in a demanding state. This typically occurs when a crime has been committed in another state and the suspect flees to Virginia before a judicial official in the state of origin has been able to issue a warrant.

Once it has been determined that the individual in question is, in fact, a fugitive, a determination must be made whether to arrest with or without a warrant. (See Sec. 19.2-99; 19.2-100 of the Code of Virginia.) In general, whenever feasible, a warrant should be obtained. This is typically accomplished by the law enforcement official appearing before a magistrate, outlining the reasons for an arrest, and presenting whatever supporting information may be available (i.e., NCIC message, etc.). The magistrate will weigh the information presented and make a determination on whether or not to issue an arrest warrant. The magistrate will not become involved with issues related to probable cause. Rather, the magistrate will simply determine whether or not the individual involved is a proper candidate for extradition. (See Chapter 4, Extraditable Offenses.)

When the fugitive has yet to be charged with a crime in another state, the law enforcement officer must be able to show a magistrate probable cause to believe that the individual in question committed the crime, in order to justify the issuance of a warrant. The law enforcement officer must rely on information received from officials of the demanding state for this purpose.

Once a warrant has been issued, the arrest is made in the same manner as if the individual had committed a crime in Virginia. The fugitive is informed of his or her rights and told the reasons for his or her arrest by the officer. The fugitive is then taken before a magistrate, who will decide whether or not bail is appropriate. The officer will be told by the magistrate to either take the fugitive to jail or to release him or her on bail. Bail may be allowed by the court, except in cases

where the crime is punishable by death or life imprisonment or the offender was transferred under the Interstate Compact for Adult Offender Supervision (See Sec. 19.2-102 of the Code of Virginia.) The only time a warrant is not required is when the fugitive has been officially charged with a crime in the demanding state that is punishable by death or imprisonment for more than one year. (See Sec. 19.2-100 of the Code.)

When arrested under such circumstances the accused must be presented "with all practical speed" before a judge, magistrate or other officer of the court authorized to issue criminal warrants, with the complaint being issued against the suspect under oath setting forth the grounds for the arrest. As will be discussed in a subsequent section of this manual, the officer of the court will hear the grounds for the arrest and the response by the suspect. Moreover, since the individual was arrested without a warrant, the judge or magistrate will make a determination of whether or not the crime is punishable by death or imprisonment for more than one year within the demanding state. As for an arrest with a warrant, the officer of the court, typically a magistrate will render an order which generally either commits the suspect to jail or releases him on bond.

Whether the arrest is made with or without a warrant, the law enforcement officer is responsible for obtaining a copy of the arrest warrant or indictment charging the fugitive with a crime in the demanding state. When obtained, this information should be attached to the arrest warrant issued in Virginia.

NOTE: Please keep in mind that Interstate Compact offenders are NOT considered fugitives. For more information on handling offenders transferred under the Interstate Compact for Adult Offender Supervision, please see Chapter 12-A.

**B. Seeking the Return of a Fugitive to Virginia**

Local law enforcement officers play a major role in seeking the return of fugitives to Virginia. While it is the Commonwealth's Attorney who ultimately decides whether or not to proceed with extradition, it is the law enforcement official who typically initiates the process and who supplies much of the information on which the decision is ultimately based.

The process of obtaining the return of a fugitive from Virginia who refuses to waive extradition would be accomplished in three distinct but interrelated steps. First, so that the Commonwealth's Attorney can be properly briefed on the case, the officer should undertake a comprehensive review of all evidence. Specifically, the officer should review any available investigative reports and affidavits, determine the current status of all witnesses (including levels of recall and potential changes in testimony), and, in general, ascertain whether or not extradition is appropriate and likely to succeed. Moreover, the officer should obtain copies of the fugitive's criminal record, if any, and have copies of such available when meeting with the Commonwealth's Attorney.

The second step is for the officer to obtain copies of the existing charging document (either an indictment or an arrest warrant). If such documents do not exist, the officer should appear before a magistrate and relate the facts of the case in order to obtain an arrest warrant. (See Sec. 19.2-99 of the Code of Virginia.) In any case, the officer should possess either an arrest warrant with an

acceptable affidavit (sworn before a magistrate or judge and dated no later than the date on the warrant), or a copy of the appropriate indictment for review with the Commonwealth's Attorney.

With the information outlined above in hand, the law enforcement official should meet with the Commonwealth's Attorney who will make the ultimate decision on whether or not to proceed with the extradition. At this meeting it is imperative for the officer to be as forthright as possible about any and all factors which might impact the outcome of any future case against the fugitive. The role of the law enforcement official may conclude following this briefing, or the officer may be requested by the Commonwealth's Attorney to assist with the preparation of the necessary extradition papers, or to serve as an agent for retrieval of the fugitive, once the extradition has been approved. As a matter of policy, only Virginia law enforcement officers shall be used as agents for the Commonwealth of Virginia in returning a fugitive to this state. Moreover, at least one of the officers sent to retrieve a fugitive shall be of the same sex as the fugitive.

# CHAPTER 7

# THE MAGISTRATE

## A. An Arrest with a Virginia Warrant

The magistrate is involved with the extradition process in a variety of ways. Typically, the magistrate's initial involvement comes through a request from a law enforcement official seeking an arrest warrant for a fugitive. The magistrate's responsibilities in this regard are twofold: 1) he or she needs to make a determination on whether or not sufficient grounds exist for an arrest; and 2) if there are sufficient grounds, the magistrate issues the warrant with the required affidavit. (See Sec. 19.2-99 of the *Code of Virginia.*)

The grounds on which a warrant can be issued are fairly straightforward. As specified in the *Code of Virginia*, except under highly unusual circumstances (See Sec. 19.2-91), the warrant should be issued only if the individual in question has committed a crime in another state and has: 1) "fled from justice," 2) been convicted and "escaped from confinement;" or 3) "broken the terms of his bail, probation, or parole." (See Sec. 19.2-99)

Once it has been determined that sufficient grounds exist, the magistrate completes the required warrant and affidavit. Original copies of these documents must then be forwarded to the Clerk of the District Court, together with any other materials used to document the fact that the individual in question is a fugitive (i.e., the NCIC messages or other communications from the demanding state).

Typically the officer requesting a Virginia warrant will not have the arrest warrant or indictment from the demanding state in his or her possession at this time. If he or she does not, the magistrate should instruct the officer to obtain such and attach it to the clerk's original warrant at his or her earliest convenience.

The magistrate's next involvement in the process is when the fugitive is brought before him or her after the arrest has been made. At that time the magistrate: 1) informs the fugitive of the charges and his or her legal rights under the law; and 2) determines whether or not to allow bail. (See Sec. 19.2-101 – 19.2-103 of the *Code of Virginia*.)

Bail can be allowed unless the fugitive has been charged with a crime in the demanding state which is punishable by either death or life imprisonment, or was transferred under the Interstate Compact for Adult Offender Supervision. As required by the *Code* (Sec. 19.2- 101 – 19.2-103), bail should be with sufficient sureties, and in such sum as he deems proper, conditioned upon the fugitive's appearance before a judge at a time specified in such bond (within 30 days) and upon surrender for arrest upon the warrant of the Governor of this State. If a Governor's Warrant has not been issued by the time of the required court appearance, the fugitive may be discharged by a judge or recommitted for a further period not to exceed 60 days. (See Sec. 19.2-103 of the *Code of Virginia.*)

While there is no requirement to have an immediate court appearance for a fugitive released on bond, such an appearance is frequently well advised. An early appearance allows the judicial official to: 1) review the extradition process with the fugitive; 2) inform the fugitive of his or her right to counsel and appoint counsel if necessary; and 3) evaluate the adequacy of the bond. Fugitives often waive extradition after this initial appearance before a judge and after talking with counsel.

### B. An Arrest on a Governor's Warrant

When an arrest is made on a Governor's Warrant, it is handled in a somewhat similar manner. In such a situation, the magistrate informs the fugitive: 1) of the charges within the demanding state; 2) of his or her rights to counsel and to communicate with friends; and 3) that the Governor of Virginia has issued a warrant for his or her arrest. (See Sec. 19.2-92 – 19.2-95 or the *Code of Virginia*.)

The fugitive is then placed in jail and ordered to return to court at the earliest possible date. At the court appearance, the fugitive is informed of the right guaranteed under Section 19.2-95 of the *Code* to apply for writ of habeas corpus. Once a Governor's Warrant has been issued, it is advisable that the fugitive be held without being released on bail.

### C. An Arrest without a Warrant

On some occasions an officer is not required to obtain a warrant prior to an arrest. Specifically, a warrant is not required if the fugitive has been officially charged with a crime in another state that is punishable by either imprisonment for more than one year or by death. In these situations the fugitive must be presented before the magistrate "with all practical speed" following the arrest. (See Sec. 19.2-100 of the *Code of Virginia.*)

Upon presentation of a fugitive so arrested, the magistrate has responsibilities in addition to those outlined within the preceding sections. Most importantly, a determination must be made on whether or not the officer had adequate grounds for the arrest. An arrest without a warrant can be made only when the person has been charged with a crime in the demanding state that is punishable by death or imprisonment for more than one year. To make such a determination, the magistrate should place the officer under oath and question him or her on the reasons for the arrest. The magistrate should also carefully examine any information the officer has which led him or her to believe the individual in question is, in fact, a fugitive. This might include an NCIC message, a telegram or letter from an officer in the demanding state, or a copy of the demanding state's warrant or indictment. Based upon the officer's testimony and written material presented, the magistrate makes a determination on whether or not the person arrested is or is not the individual charged in the demanding state, and whether or not there were sufficient grounds for the arrest. The magistrate determines only whether or not the person has been charged. No determination is made related to the probable cause for the charge.

Once the magistrate determines that an arrest without a warrant was appropriate, he or she issues a warrant together with required affidavit. Once a warrant has been issued, the magistrate follows steps similar to those indicated in the preceding section.

### D. An Arrest before the Fugitive has been Charged in the Demanding State

On extremely rare occasions it may be necessary to arrest a fugitive before he or she has been formally charged in the demanding state. This typically occurs when an individual commits a crime in a neighboring state and flees across Virginia's border. Law enforcement officials in Virginia may, under such circumstances, be asked to arrest the suspect before an appropriate official in the demanding state can be located to issue an arrest warrant.

A Virginia arrest warrant must be obtained by the Virginia law enforcement officer before making an arrest under these circumstances. A magistrate typically issues this warrant. In issuing the warrant, the magistrate follows the same procedures as would be followed in charging a Virginia resident with a crime. Specifically, the magistrate places the law enforcement officer under oath, questions him or her on the facts in the case, and determines whether or not there is probable cause to believe that the individual in question committed the crime. The mere word of a law enforcement official from the demanding state that the individual committed the crime is insufficient in this circumstance. Rather, the magistrate must be provided with enough detail to determine probable cause.

Once probable cause has been determined, the magistrate will issue the required arrest warrant. In the warrant the magistrate will indicate that the crime was committed against the laws of another state and detail the name of the crime in question. It is not necessary for the magistrate to outline the elements of the offense in the warrant.

# CHAPTER 8

# THE CLERK OF THE COURT

The clerk of the court plays a major role in the scheduling of hearing dates and court appearances, the handling of official extradition papers, and in the certification of officials involved in the extradition process. Like most actors in the extradition process, the nature of the role played by the clerk in any specific extradition request depends upon the circumstances of the case, and particularly whether Virginia is the asylum or the demanding state.

## A. The Clerk's Role When Virginia is the Asylum State

After the Arrest

When Virginia is the asylum state, the clerk becomes involved with the extradition case immediately after the arrest of a fugitive, when he or she is taken before the magistrate. The clerk's role at this time is twofold: 1) when the fugitive's papers are available, a docket number is assigned; and 2) the clerk schedules an appearance before a judge at the first possible court session.

An early appearance before a judge is crucial for several reasons. It allows the judge to outline the charges against the fugitive, explain the extradition process, review the level of bail set by the magistrate (if any), and determine whether or not the fugitive is willing to waive extradition.

When Extradition is Waived

If the fugitive waives extradition (Sec. 19.2-114 of the *Code of Virginia*), the waiver is accepted by the judge and given to the clerk of the court for proper processing. The original waiver is sent to the Secretary of the Commonwealth's office. A copy of the waiver is placed in the fugitive's case file, with an additional copy being sent to the jail where the fugitive is being held. The latter copy is for transmittal to the officer from the demanding state when he or she takes custody of the fugitive.

The clerk of the court is also responsible for ensuring that the case file is complete. In addition to the waiver, this file should include copies of all correspondence related to the fugitive.

When the Fugitive Does Not Waive Extradition

When extradition is not waived, a somewhat different process is employed. A docket number and initial hearing date are still assigned. If extradition is not waived at the initial hearing, however, the judge will frequently rule on indigence an, if necessary, assign an attorney to represent the fugitive. If an attorney is appointed, he or she should be provided with: 1) a copy of the appointment; 2) a copy of the form refusing to waive extradition; 3) a copy of the arrest warrant; and 4) notification of the next court date.

Typically the judge will continue the case for 30 days following the initial court appearance, with the defendant being ordered to return to court at that time. In the absence of a Governor's Warrant being issued, the case may again be continued. If no urgency is being shown by the demanding state for carrying out a formal extradition, the judge may decide to release the fugitive. In any case, the clerk of the court should, following the court date, record the appropriate information on either the commitment paper or release form.

When a Governor's Warrant is issued, if the fugitive is not incarcerated, the warrant is given to an officer to take the fugitive into custody. The fugitive is scheduled by the clerk of the court for the next court session. At that session the judge will inform the fugitive of the right to apply for a writ of habeas corpus, and through a continuance, give him or her sufficient time to make a decision in this regard. If the fugitive does not make application within the given time frame, the judge will typically order him turned over to an agent from the demanding state.

If a writ of habeas corpus is applied for, the fugitive's docket file is forwarded to the clerk of the circuit court. The case then becomes a pending court case to be set for hearing by the Commonwealth's Attorney.

The final duty of the clerk of the court when Virginia is the asylum state is to place a copy of the Governor's Warrant in the Circuit Court file. This is the case whether the fugitive is released with or without a habeas corpus hearing.

## B. The Clerk of the Court's Role When Virginia is the Demanding State

The role of the clerk of the court is much less extensive when Virginia is the demanding state in an extradition proceeding. Here the basic role of the clerk is that of a certifying officer. Specifically, when the Commonwealth's Attorney submits a request for extradition to the Governor, a copy of the arrest warrant or indictment must be included with it. This copy must be certified by either the official who issued it, or the clerk of the court who holds the original.

The clerk of the court also certifies other officials who certify documents related to any particular extradition case. These may include the Commonwealth's Attorney, the magistrate, or the judge. Likewise, the clerk of the court should be certified by a judge that he or she is, in fact, the clerk of the court.

# CHAPTER 9

# THE COMMONWEALTH'S ATTORNEY

## A. When Virginia is the Asylum State

Prior to the Issuance of a Governor's Warrant

When a fugitive is first arrested, he or she is typically taken before a magistrate who informs him or her of the charges, explains his or her rights under the law, and makes a determination on whether or not bail will be allowed. (See Sec. 19.2-101 – 19.2-103 of the *Code of Virginia*.) Bail can be allowed unless the fugitive has been charged with a crime in the demanding state which is punishable by either death or life imprisonment. Typically, the magistrate will then schedule an appearance in district court at the earliest session possible, although the fugitive can be released for up to 30 days on bail, before seeing a judge.

At the initial appearance in district court several things will occur. The judge will inform the fugitive of the charges, make sure that he or she has copies of both the arrest warrant and the magistrate's order, review bail, and appoint an attorney if deemed necessary. The judge will also determine if the fugitive is willing to waive extradition. If he or she is, the fugitive can then be released to an authorized agent from the demanding state. If the fugitive refuses to waive extradition, the district court judge will either allow the fugitive to continue on bonded release or require continued confinement for a period of up to 30 days from initial arrest, awaiting the issuance of a Governor's Warrant.

When a Fugitive Seeks a Writ of Habeas Corpus

If the fugitive seeks a writ of habeas corpus, the Commonwealth's Attorney will be notified by the clerk of the court, and will represent the Commonwealth at the hearing in circuit court. (See Sec. 19.2-95 of the *Code of Virginia*.) Four issues are open for discussion at this hearing:

- That the demand for extradition was pursued according to proper form;
- The identity of the fugitive;
- Whether the individual being extradited is a fugitive from the demanding state; and
- Whether the defendant has been properly charged with a crime.

A variety of documents are frequently necessary to demonstrate that the extradition was made in proper form. These typically include copies of the indictment or arrest warrant, together with supporting affidavits, used to charge the defendant in the demanding state. Where the individual being extradited has escaped from imprisonment, or broken the terms of bail, probation or parole, the demanding state should provide copies of the judgement of conviction, together with a statement outlining that the individual escaped or violated bail, probation or parole.

Issues related to the fugitive's identity can frequently be easily handled when a photograph or fingerprints accompany the extradition papers. A witness for the demanding state may also be helpful to document that the individual being extradited, is, in fact, the fugitive. Problems related to the identity of the fugitive are lessened somewhat by the fact that it is the defendant,

rather than the state, that has the burden of proof in this situation. That is, the defendant must be able to demonstrate that he or she is *not* the fugitive.

As with the issue of identity, once the defendant is identified in the Governor's Warrant as a fugitive from the demanding state, the burden shifts to the defendant to show otherwise. Thus, the issue of whether or not the defendant is a fugitive from the demanding state is not as difficult as might be imagined. Generally the defendant will not prevail in this situation unless his or her presence was required for the commission of the crime, and he or she can demonstrate a presence elsewhere at the time it was committed.

The only other way the defendant can gain release through habeas corpus is by demonstrating that his or her acts, according to relevant statutes of the state in question, do not constitute a crime. Again, the burden is on the defendant to refute the allegations in the Governor's Warrant. It is not appropriate in this situation to consider guilt or innocence, motives of the demanding state, constitutional issues related to the ability of the defendant to receive a fair trial in the demanding state, etc. The only other justification that might apply would be the defendant's ability to show great likelihood of being subject to cruel and unusual punishment in the demanding state.

<u>If Virginia has Charged the Fugitive</u>

The extradition process is complicated somewhat when the fugitive is also charged with a crime in the Commonwealth. The Governor may delay extradition in this situation. (See Sec. 19.2-115 of the *Code of Virginia.*) It is incumbent on the Commonwealth's Attorney for the jurisdiction where the fugitive is being held to notify the Governor that a charge is pending before a Governor's Warrant is issued.

## B. When Virginia is the Demanding State

When Virginia is the demanding state, the Commonwealth's Attorney has three major responsibilities: 1) to evaluate each case to determine whether the Commonwealth should seek extradition; 2) to prepare the necessary extradition papers; and 3) to identify the agents to be sent to the asylum state to retrieve the fugitive.

<u>Determining if the Fugitive Should be Extradited</u>

A variety of factors must be considered in determining whether or not it is appropriate to seek the extradition of a fugitive. These factors include:

- The nature of the offense;
- The seriousness of the crime;
- Potential challenges against evidence or methods of investigation;
- Previous convictions;
- The likelihood of the commission of additional crimes by the fugitive;
- The potential length and impact of imprisonment on the fugitive;
- The likelihood that the extradition would be granted by the Governor of the asylum state; and
- The potential loss of the deterrent effect on others, if the fugitive is not extradited.

- If the offender was transferred under the Interstate Compact for Adult Offender Supervision, full extradition must always be authorized when a warrant or capias is issued. With Interstate Compact cases, the Commonwealth Attorney does not have discretion about whether to retake the offender or whether to limit extradition to a specific geographic area under the rules of the Compact that all authorities in Virginia are obligated to abide by.

Preparing the Extradition Papers

The paperwork for an extradition is prepared in the office of the Commonwealth's Attorney, typically by an Assistant Commonwealth's Attorney or administrative assistant. Frequently the law enforcement officer who brought the case to the attention of the Commonwealth's Attorney's office will also assist.

A variety of documents are required to facilitate this process. (See Sec. 19.2-87 of the *Code of Virginia*.)

Copies of an indictment or arrest warrant If an indictment has been issued, it should be used. If neither the indictment nor warrant is available, it is incumbent upon the Commonwealth's Attorney to have one issued. Regardless of which is used, the document should be carefully reviewed to ensure that it properly charges the offense and cites the statutes violated. If an indictment is used it must be signed by the foreman.

Affidavit(s) An affidavit, generally from either the victim or the investigating officer, must accompany the arrest warrant. This document should contain sufficient detail to establish probable cause for issuance of the warrant, and should be sworn before either a magistrate or a judge. The date on the affidavit should be the same or earlier than that on the arrest warrant so that it can be demonstrated that the affidavit was the basis on which the warrant was issued. If this is not the case, a new warrant should be issued. Typically, an affidavit is not necessary when an indictment is the charging document, although some states prefer to have it included.

The application for a requisition This form must include:

- The fugitive's full name and aliases, properly spelled;
- A statement that, in the opinion of the Commonwealth's Attorney, the fugitive must be returned so that the ends of public justice are served;
- A statement confirming that sufficient information exists to convict the fugitive;
- Information on the agents who will return the fugitive to Virginia, including their full names and titles, as well as a statement indicating that they are proper persons and have no interest in the arrest or conviction of fugitive;
- A statement related to any previous application for requisition indicating appropriate dates and the reasons for the current request;
- A statement related to the current status of the fugitive, together with the source of that information;
- A statement that the extradition is not being sought for the purposes of collection of a debt or for any private purpose, and that if the request is honored the proceedings will not be used for such purposes;
- A detailed statement related to the crime, including the statutes violated, and the time, date and place the crime took place;
- A statement that the fugitive was in Virginia when the crime was committed or that the person committed an act in another state that resulted in a Virginia crime; and

- An explanation why there was a delay in making application for requisition, if for any reason there has been one.

Copies of the statute the fugitive is charged with violating

Information for identification of the fugitive When available, this information should include fingerprints, a photograph and/or a physical description of the fugitive. If a photo is included, it should be supplemented with an affidavit indicating that the person shown is the individual charged with the crime.

Certifications Documents related to the extradition process such as warrants and affidavits must be certified by the individual issuing them (the magistrate or judge). The clerk of the court may certify copies when he or she is the holder of the original. Moreover, individuals who within their official capacities issue such documents must be certified as to their official positions. This is accomplished through a triple certification procedure. When a magistrate or judge certifies a document, the clerk of the court is then certified by the judge of the circuit court. Then the clerk must certify the official position of the judge who certified the clerk. Finally, the clerk of the court must certify the Commonwealth's Attorney who submits the application. If the case originates in the district court, the certification is required in both the district and the circuit court.

## Identifying the Agents to Retrieve the Fugitive

The final area of involvement of Commonwealth's Attorneys is in the identification of agents to go to the asylum state to retrieve the fugitive after extradition has been approved or waived. (See Sec. 19.2-108 of the *Code of Virginia*.) As suggested within the previous section of this manual, the names and titles of such individuals, together with a statement that they are proper persons and have no private interest in either the arrest or conviction of the fugitive, must be included within the application for requisition.

In naming the agents, the Commonwealth's Attorney should take a number of factors into consideration. First, as a matter of policy, only Virginia law enforcement officers shall be used as agents for the Commonwealth of Virginia in returning a fugitive to this state. Second, at least one of the officers sent to retrieve the fugitive shall be of the same sex as the fugitive. Finally, other factors being equal, it is always best to have the investigating officer or law enforcement officer familiar with the case named as an agent.

# CHAPTER 10

## JUDGES OF THE DISTRICT AND CIRCUIT COURTS

Judges of the district and circuit courts have major roles in the extradition process when Virginia is the state of asylum for a fugitive. The district court judge, in particular, has major responsibilities for: informing fugitives of their rights; setting and/or reviewing bail; determining the need for and, where appropriate, appointing counsel; evaluating the legal issues associated with each arrest; etc. Being of a higher court, the circuit court judge is legally empowered and may upon occasion become involved with extradition in similar ways. More typically, however, he or she will become involved only after the fugitive applies for a writ of habeas corpus.

### A. The Role of the District Court Judge

The district court judge generally becomes involved with the extradition process after the fugitive has already been arrested, although on rare occasions he or she may be asked to issue an arrest warrant. In the typical case, the fugitive will have already appeared before a magistrate who, as outlined in a preceding section, determines if there were sufficient grounds for an arrest, informs the fugitive of the charges against him or her, determines whether or not to allow bail, and orders the fugitive to appear in court on the next available court day. (See Sec. 19.2-101 of the *Code of Virginia*.)

At the first appearance in district court, the judge will typically use the appearance for five purposes:

1) To inform the fugitive of the charges against him;
2) To confirm that the fugitive has a copy of the arrest warrant or magistrate's order;
3) To determine if the level of bail set by the magistrate, if any, was appropriate;
4) To evaluate the need to appoint counsel for the fugitive, and to appoint such, if necessary; and
5) To provide the fugitive with the opportunity of waiving extradition.

Once these tasks are accomplished, the fugitive is either returned to jail or released on bail. In either case, unless the fugitive waives extradition, he or she is typically ordered by the judge to return to district court on a specified date within 30 days, with a stipulation that he or she may be required to return sooner in the event that a Governor's Warrant is issued.

At the next appearance in court, the district court judge will make a determination on whether or not a Governor's Warrant has been issued. If it has not been issued, bond may be continued or the fugitive may be re-confined to jail for up to an additional 60 days awaiting the issuance of such. In any case, before re-confinement of the fugitive it is useful to determine from either the Commonwealth's Attorney or the appropriate law enforcement officer whether the demanding state is diligently pursuing extradition. If it is not, it may be appropriate to release the fugitive at this time.

When the Governor's Warrant is Issued

Once the Governor's Warrant has been issued, the *Code of Virginia* requires that the fugitive appear before a judge prior to being turned over to the agent of the demanding state (Sec. 19.2-95). At this court appearance the judge must, as specified in the *Code*, inform the fugitive of the "demand made for his surrender and of the crime with which he is charged, … that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge or trial justice shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus."

The fugitive should be held until the expiration of the time limit for applying for the writ of habeas corpus. As soon as the time limit has been reached, the fugitive may be turned over to the agent from the demanding state. Once the Governor's Warrant has been issued, it is recommended that bail not be allowed.

When Extradition is Waived

The fugitive may waive extradition and be delivered to an agent from the demanding state at any time following his or her initial arrest. (See Sec. 19.2-114 of the *Code of Virginia*.) To waive extradition, the fugitive must appear before a judge and state, in writing, that he or she consents to being returned to the demanding state. At this appearance and before the waiver is actually signed, the judge must inform the fugitive that he or she has the right to refuse to waive extradition, and that if a Governor's Warrant is issued, a writ of habeas corpus may be applied for.

Once the waiver of extradition is signed, the original is forwarded to the Governor's Extradition Specialist in the Secretary of the Commonwealth's Office and a copy is given to the agent from the demanding state. The judge then orders the fugitive released to the agent or held in jail until the agent arrives.

## B. The Role of the Circuit Court Judge

As suggested at the beginning of this chapter, the circuit court judge possesses all the legal powers of the district court judge and may, when circumstances dictate, assume many of the same responsibilities outlined above. More typically, however, the circuit court judge does not become involved in extradition procedures unless a Governor's Warrant is issued and the fugitive chooses to apply for a writ of habeas corpus (Sec. 19.2-95 of the *Code of Virginia*). The hearing on the writ of habeas corpus is limited to discussing four major issues:

1) That the demand for extradition was pursued according to proper form;
2) The identity of the fugitive;
3) Whether the individual being extradited is a fugitive from the demanding state; and
4) Whether the individual subject to extradition has been properly charged with a crime.

Determining if the Extradition was Pursued according to Proper Form

The circuit court judge must examine a number of items to determine that the extradition has been made in proper form. Paramount on this list of items is the indictment or arrest warrant, together with supporting affidavits used to charge the defendant in the demanding state. The indictment, information, or arrest warrant and supporting affidavit must both charge the fugitive being extradited with a crime in the demanding state, and be authenticated by that state's governor. Where the individual being extradited has escaped from imprisonment or broken the terms of bail, probation or parole, a copy of the demanding state's judgement of conviction, together wit a statement outlining that the individual escaped or violated bail, probation or parole should be included with the extradition papers. Charges are not invalidated by minor wording defects, nor is there any specific form by which the governor of the demanding state authenticates the charging documents.

Although Virginia has no case law on point, other jurisdictions have held that issuance of the Governor's Rendition Warrant is conclusive of the question whether the other state's Requisition Warrant is in proper form.

Determining Identity

Issues related to the identity of the fugitive can frequently be easily managed when a photograph or fingerprints accompany the extradition papers. A witness from the demanding state may also be helpful to document that the individual being extradited is, in fact, the fugitive. Problems related to the identity of the fugitive are lessened somewhat by the fact that it is the defendant, rather than the state, which has the burden of proof in this situation. That is, the defendant must be able to demonstrate that he is *not* the fugitive.

Determining Fugitive Status

As with the issue of identity, once the defendant is identified in the Governor's Warrant as a fugitive from the demanding state, the burden shifts to him or her to show otherwise. Thus, the issue of fugitive status is not as difficult as might be imagined. Generally in this situation the defendant must prove that his or her presence was required for the commission of the crime in the demanding state, and that he or she was elsewhere at the time of its commission. Reasons for the defendant leaving the state are irrelevant.

The Correctness of the Charge

The only other justification for gaining release through habeas corpus is by demonstrating that his or her acts, according to relevant statutes of the state in question, do not constitute a crime. Again, the burden is on the defendant to refute the allegation in the Governor's Warrant. It is not appropriate in this situation to consider guilt or innocence of the fugitive, motives of the demanding state, constitutional issues related to the ability of the defendant to receive a fair trial in the demanding state, prison conditions, etc. In fact, the only other justification that might apply would be the defendant's ability to show great likelihood of being subject to cruel and unusual punishment in the demanding state.

A judgement denying habeas corpus is a final judgement of the circuit court, for which the defendant may appeal to the Virginia Supreme Court. Either a Circuit Court Judge or a Supreme Court Justice may issue a stay to allow the Supreme Court to hear the appeal. The State also has the right to appeal to the Supreme Court when a judgement is made grant habeas corpus.

# PART IV

# CASES REQUIRING SPECIAL CONSIDERATION

# CHAPTER 11

# EXTRADITION OF JUVENILES

There is no clear authority in Virginia regarding the extradition of juvenile offenders. Although there is a statutory basis for reasoning that juveniles may be extradited in the same manner as adults, there is no Virginia case law applying any statutory provisions in juveniles. In jurisdictions that have confronted the issue of juvenile extradition of minors, and therefore judicial authorities concede that juveniles may be extradited in the same manner as adults.

## A. Sources of Information

**1. The Uniform Criminal Extradition Act (UCEA) (Sec. 19.2-84 through 19.2-118).** The UCEA provides that the Governor shall have any party charged with specific crimes in a state arrested and returned. However, the *Code of Virginia* (1950) as amended also provides that juvenile and domestic relations courts shall have original and exclusive jurisdiction in all cases where a child is alleged to be abused, neglected, in need of services or delinquent (Sec. 16.1-241). Because jurisdiction for juvenile offenses is in the original and exclusive jurisdiction of the juvenile courts, no indictment is permitted for a juvenile offender prior to his arrest. Thus it is questionable whether an unindicted juvenile suspect is subject to the provisions of the UCEA.

Another area in which the application of the UCEA is less than clear relates to acts of delinquency. The *Code* (Sec. 16.1-228) provides that a "delinquent child" is one who has committed a "delinquent act." A "delinquent act" is an act designated a crime under the law except with regard to those acts that are only unlawful if committed by a child. The UCEA applies to felonies or other crimes. There is no ruling in Virginia stating that a "delinquent act" qualifies under the UCEA as a felony or other crime.

**2. The Uniform Interstate Compact on Juveniles (UICJ) (Sec. 16.1-323 through 16.1-330).** The UICJ applies to runaways and to juveniles who have escaped or absconded from a state after having been adjudged delinquent. It also provides for youths alleged to be delinquent who are absconders from justice. These youths may be returned through the juvenile requisition process as set forth in Sections 16.1-323 through 16.1-330, *Code of Virginia* (1950) as amended.

## B. Guidance

There is no clear authority in Virginia for the extradition of juveniles. Instead, if a juvenile offense is serious enough to warrant extradition, the juvenile may be returned under the provisions of the juvenile requisition process. Contact the Interstate Compact Specialist, Virginia Department of Youth Services (804-674-3385) for help with the forms and procedures in a juvenile requisition process.

# CHAPTER 12

# OTHER CASES REQUIRING SPECIAL CONSIDERATION

There are a variety of other cases where some variations in extradition procedures are required. These situations are discussed below.

## A. Waiver of Extradition by Parolees and Offenders Transferred via the Interstate Compact for Adult Offender Supervision

According to some courts, under the UCEA, a pre-release agreement by a parolee to waive extradition is valid and will allow the asylum state to return the parolee to the demanding state without the formalities of extradition. This is true even though the offender is not in the asylum state by reason of the Interstate Compact for Adult Offender Supervision (ICAOS) and regardless of the fact that extradition proceedings are pending. Absent coercion of the parolee, the execution of a waiver as a condition of probation does not render the waiver involuntary.

When the offender is in the asylum state by reason of the ICAOS, a waiver of extradition is not required. All states agree that the offender can be returned without the demanding state extraditing him or her, and the offender does not get to choose whether he or she is extradited or is returned under the summary proceedings of the ICAOS.

In most states, if the parolee has signed a waiver of extradition he or she need not be extradited even if not in the asylum state by reason of the UAOPS. It is recommended that a Virginia court validate the waiver before custody is transferred to the agents of the demanding state.

The ICAOS has been held to be constitutional, independent of the Uniform Criminal Extradition Act (UCEA), because extradition is not exclusive. The asylum state may require the governor to surrender the fugitive on terms more exacting than those imposed by an Act of Congress. The extradition provisions do not operate for the benefit of the fugitive; the parolee has no right to choose by which means he will be returned. The prevalent case law does not seem to make any distinction between parolees and probationers. Both are treated the same way, and the ICAOS covers both.

The previous Interstate Compact was called the Uniform Act for Out of State Parolee Supervision (UAOPS) under Code section 53.1-166 and 53.1-167. The new Interstate Compact for Adult Offender Supervision outlined in Code Sections 53.1-176.1 and 53.1-176.2 was enacted in 2002 and replaced the old compact. The new compact also includes probation and other forms of supervision where imposed conditions are monitored. All states as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands have ratified the new Interstate Compact and are participating members.

According to the rules of the Interstate Compact (found at www.interstatecompact.org in the Bench Book for Court Personnel):

- Interstate Compact offenders are not entitled to extradition hearings. The pre-signed waiver of extradition executed in their Application for Transfer nullifies any need for an extradition hearing.
- Interstate Compact offenders are not entitled to bail or bond on the other states' warrant.
- Interstate Compact offenders must have warrants issued with full extradition and with no limitations as to a specific geographical location (ie. cannot be limited to East of the Mississippi or surrounding states only).
- Interstate Compact offenders must be retaken within 30 calendar days of notice that the offender is being held solely on the other state's warrant and there are no other pending criminal cases or sentences to be served.

## B. Fugitive Escaped From Custody or Violated Bail, Probation or Parole

Different extradition documents are needed when the fugitive has been convicted in Virginia and escaped from custody or left the state in violation of the conditions of his bail, parole or probation. (See Sec. 19.2-110 of *Code of Virginia*.) The Commonwealth's Attorney or the sheriff if the person was in jail awaiting transfer to the Department of Corrections or was out of jail pending appeal, should prepare the application. If the fugitive escaped from the Department of Corrections' custody, the application should be made by the Director of the Department of Corrections, or the appropriate Commonwealth's Attorney. For a fugitive who left Virginia in violation of conditions of bail, probation or parole, the application should be made by the Commonwealth's Attorney for the city or county where the fugitive violated those conditions. The application for requisition should be accompanied by the following items:

- The indictment (or the arrest warrant, if the fugitive was tried on a warrant).
- The judgment of conviction and sentence on which the person was being held when the escape occurred, or the document conveying the terms of bailment.
- An affidavit reporting how the escape occurred from the officer from whose custody the person escaped.
- Any record of the escape, including photographs and fingerprints.

The clerk of the court possessing the originals of these documents must certify the authenticity of the indictment (or warrant), the judgment of conviction and sentence. The clerk of the court should also certify the official position of the person who made the affidavit that describes the fugitive's escape. The clerk of the court's official position must be certified by a judge and the judge's official position must be certified by the clerk of the court.

## C. United States Military Personnel

An application for the extradition of someone on active duty with the U.S. armed services must be accompanied by an agreement from the appropriate requesting authorities that the following will be accomplished:

- The fugitive's commanding officer will be informed of the outcome of the fugitive's trial;
- If desired by military authorities, the fugitive will be returned to military

authorities at the place where he or she was taken into custody, or taken to the nearest receiving ship, station or barracks if acquitted, or on the completion Of sentence.

If the crime is a felony and the requisition is made through the Governor's Office, this agreement will be prepared by the Governor's Office. If the crime is misdemeanor, the appropriate Commonwealth's Attorney or other official applying for the requisition should prepare the agreement. Regardless, the agreement should be in letterform and sent to the Secretary of the appropriate branch of the service.

**D. Native Americans**

In Indian affairs, there are two separate chains of authority: one consists of the federal and tribal governments; the other of state, country and local governments. Although federal law is preeminent in Indian country, the tribes are not federal instrumentalities for substantive purposes. Legally, treaties between the federal government and the Native American tribes are grants of power from the tribes. The tribes retain all powers not specifically limited. Therefore the tribes have inherent sovereignty over matters, which affect the internal relations of tribal life.

When extradition from an Indian reservation is sought, the demanding state's procedures are essentially the same for other extraditions (i.e., the prosecutor sends his application and supporting documents to the Governor, who attaches them to his requisition and sends the package to the asylum state's governor). However, the treatment of the request and the procedures required by the asylum state depend on whether the **state** or the **tribe** has jurisdiction over criminal offenses committed by or against Native Americans in Indian country within that state.

Under 18 U.S.C.A. 1162(a), the states of Alaska (with one exception), California, Minnesota (with one exception), Nebraska, Oregon (with one exception) and Wisconsin have jurisdiction over Native Americans on reservations in criminal justice matters. In the remaining states, jurisdiction depends on whether or not a tribe has a codified extradition procedure.

Where a codified procedure has been enacted, it must be followed since the asylum state's authorities have no independent authority to enter the reservation to take custody of the fugitive. The procedure typically requires that all pertinent documents, plus a cover letter indicting the demanding state's intention to extradite, be presented to the tribal council or tribal court. That body will review the request and determine whether to render the fugitive for extradition.

Where there is no codified tribal extradition procedure, asylum state authorities may enter the reservation and take the fugitive into custody in the same manner as they could in any other part of their state.

Notwithstanding the fact that any asylum state has authority to enter a reservation to take custody of a fugitive, either under 18 U.S.C.A. 1162(a) or because the tribe has no codified extradition procedure, proper respect for tribal sovereignty must be shown. To this end, the Bureau of Indian Affairs suggests that prior to entering the reservation to make the arrest, the tribal council or court be consulted and presented with the appropriate documents in an effort to determine proper protocol.

## E. Other Special Cases

Fugitives out of the United States In cases of international extradition, the appropriate Commonwealth's Attorney's first step in an international fugitive case should be to contact the Office of International Affairs (OIA (202)-514-0000. Every formal request for international extradition based on Federal or state criminal charges must be reviewed and approved by OIA. Attorneys in OIA will advise prosecutors about the potential for extradition in a given case and the steps to be followed. The Secretary of the Commonwealth's office will process the request, add the Governor's endorsement, and send it to the Department of Justice in Washington.

Fugitives in United States Possessions If the fugitive is in a U.S. territory, the Commonwealth's Attorney completes the extradition papers and sends them to the Governor. The Secretary of the Commonwealth's office will process the request, add its endorsement, and send it to the territorial governor.

Fugitives in the District of Columbia If the fugitive is in the District of Columbia, the appropriate Commonwealth's Attorney completes the extradition papers and sends them to the Governor. The Secretary of the Commonwealth's office will process the request, add its endorsement and send it to the Chief Judge of the Superior Court of the District of Columbia.

Renewal of the application When an application must be renewed - - for example, when the fugitive could not be found in the state from which the requisition was first sought - - new or re-certified copies of the papers required for extradition must be furnished.

Other States See Appendix B.

# APPENDIX A

# SAMPLE EXTRADITION FORMATS

1. Return of Fugitives Who Have Been Indicted

2. Return of Fugitives Who Have Not Been Indicted

3. Return of Fugitives Charged with Violation of Probation

4. Return of Fugitives Charged with Violation of Parole

5. Certificate for Copy of Indictment, etc.

6. Certificate for Judge as to Official Character of Clerk

7. Certificate for Clerk as to Official Character of Commonwealth's Attorney

8. Agreement Between Commonwealth's Attorney and Armed Forces

**APPLICATION FOR THE RETURN OF FUGITIVES WHO HAVE BEEN INDICTED**

Commonwealth of Virginia:
City/County of_____:

To His Excellency, the Governor of Virginia:

I, **(Commonwealth's Attorney's Name)**, Commonwealth's Attorney for the City/County of **(jurisdiction)** respectfully request that a requisition be issued for the return of **(name and aliases of fugitive)** who is now in **( city/county or parish, and state)** and charged with **( list crime(s))** in the City/County of **(jurisdiction)**, and being a fugitive from justice, and that you empower **(title, first and last name of Virginia law enforcement officer (s)** of **(city/county)**, Virginia in due form as authorized agents to receive and return **(name of the fugitive and aliases)** to the Commonwealth of Virginia.

In support of this application, I certify that:

**1** The full name of the fugitive for whom extradition is asked is (**name and aliases of the fugitive)** who was in the Commonwealth of Virginia at the time of the commission of the crime;

2 In my opinion, the end of public justice requires that the fugitive be brought to this State for trial, at the public expense;

3 In my opinion, I have sufficient evidence to secure the conviction of the fugitive;

**4** The names of the agents proposed to receive and return the fugitive to Virginia are **(title, first and last name of Virginia law enforcement official(s))**; the proposed agent(s) are proper persons and have no private interest in the arrest of the fugitive;

5 No other application has been made for a requisition of the fugitive growing out of the same transaction herein alleged;

6 The fugitive is not known to be under either civil or criminal arrest in (**city/state)** except as otherwise herein set forth;

7 This application is not made for the purpose of enforcing the collection of a debt, or for removing the fugitive to a foreign jurisdiction with a view there to serve him with civil process, or for any private interest whatever; and if the requisition is granted, the

criminal proceeding shall not be used for any other purpose;

8 The nature of the crime with which the fugitive is charged is **(list crime(s))**; this crime is defined and punishment is prescribed by Section_____of the *Code of Virginia* (1950) as amended;

9 There has been no delay in making this application;

10 **(The name and aliases of the fugitive)** is now under arrest in **(city/county/parish, state)** and is held by the police authorities of **(jurisdiction)**;

11 The fugitive has been indicted.

Respectfully submitted this_____day of_____, 2001.

_____,
Commonwealth's Attorney for the City/County of **(jurisdiction)**, Virginia

**APPLICATION FOR THE RETURN OF FUGITIVES WHO HAVE NOT BEEN INDICTED**

Commonwealth of Virginia:
City/County of_____:

To His Excellency, the Governor of Virginia:

I, **(Commonwealth's Attorney's Name)**, Commonwealth's Attorney for the City/County of **(jurisdiction)** respectfully request that a requisition be issued for the return of **(name and aliases of fugitive)** who is now in **( rendering jurisdiction)** and charged with **( list crime(s))** in **(city/county)** of **(state)**, and with being a fugitive from justice, and that you empower **(title, first and last name of Virginia law enforcement officer (s)** in due form as authorized agents, to receive and return **(name of the fugitive and aliases)** to the Commonwealth of Virginia.

In support of this application, I certify that:

1. The full name of the fugitive for whom extradition is asked is (**name and aliases of the fugitive)** who was in the Commonwealth of Virginia at the time of the commission of the crime;

2. In my opinion, the end of public justice requires that the fugitive be brought to this State for trial, at the public expense;

3. In my opinion, I have sufficient evidence to secure the conviction of the fugitive;

4. The names of the agents proposed to receive and return the fugitive to Virginia are **(title, first and last name of Virginia law enforcement official(s))**; the proposed agent(s) are proper persons and have no private interest in the arrest of the fugitive;

5. No other application has been made for a requisition of the fugitive growing out of the same transaction herein alleged;

6. The fugitive is not known to be under either civil or criminal arrest in (**city/state)** except as otherwise herein set forth;

7. This application is not made for the purpose of enforcing the collection of a debt, or for removing the fugitive to a foreign jurisdiction with a view there to serve him with civil process, or for any private interest whatever; and if the requisition is granted, the

criminal proceeding shall not be used for any other purpose;

8. The nature of the crime with which the fugitive is charged is **(list crime(s))**; this crime is defined and punishment is prescribed by Section_____of the *Code of Virginia* (1950) as amended;

9. There has been no delay in making this application;

10. **(The name and aliases of the fugitive)** was arrested in **(rendering jurisdiction)** by the police authorities of **(rendering jurisdiction)** for the crimes alleged to have been committed by him, according to the information furnished me by the authorities of **(rendering jurisdiction)**;

11. The fugitive has not been indicted because he was arrested pursuant to a warrant and is entitled to a preliminary hearing prior to indictment.

Respectfully submitted this_____day of_____, 2001.

_____,
Commonwealth's Attorney for the City/County of (**jurisdiction)**, Virginia

**APPLICATION FOR THE RETURN OF FUGITIVES CHARGED WITH VIOLATION OF PROBATION**

Commonwealth of Virginia:
City/County of_____:

To His Excellency, the Governor of Virginia:

I, **(Commonwealth's Attorney's Name)**, Commonwealth's Attorney for the City/County of **(jurisdiction)** respectfully request that a requisition be issued for the return of **(name and aliases of fugitive)** who is now in **( rendering jurisdiction)** and convicted of **( list crime(s))** and has violated the terms of his/her probation in the City/County of **(jurisdiction)**, Virginia, as shown by the Order of Conviction entered thereon on **(date)** in the Circuit Court of **(jurisdiction)**, and by the letter of violation of probation filed herewith and attached hereto and with being a fugitive from justice, and that you empower **(title, first and last name of Virginia law enforcement officer (s)** of **(city/county)**,Virginia in due form as authorized agents, to receive and return **(name of the fugitive and aliases)** to the Commonwealth of Virginia.

In support of this application, I certify that:

**1** The full name of the fugitive for whom extradition is asked is **(name and aliases of the fugitive)** who was on supervised probation from the Circuit Court of **(jurisdiction)**, Virginia, for the conviction of the crime of **(list crime(s))** as noted in the Order of Conviction attached hereto;

2 In my opinion, the end of public justice requires that the fugitive be brought to this State for a hearing on his violation of probation, at the public expense;

3 In my opinion, I have sufficient evidence to secure the revocation of supervised probation of the fugitive;

**4** The names of the agents proposed to receive and return the fugitive to Virginia are **(title, first and last name of Virginia law enforcement official(s))**; the proposed agent(s) are proper persons and have no private interest in the arrest of the fugitive;

5 No other application has been made for a requisition of the fugitive growing out of the same transaction herein alleged;

6 The fugitive is not known to be under either civil or criminal arrest in the

**(rendering jurisdiction)** except as otherwise herein set forth;

7. This application is not made for the purpose of enforcing the collection of a debt, or for removing the fugitive to a foreign jurisdiction with a view there to serve him with civil process, or for any private interest whatever; and if the requisition is granted, the criminal proceeding shall not be used for any of the said objects;

8. The nature of the crime with which the fugitive is charged is Violation of Probation and for which punishment is prescribed by Section_____ of the *Code of Virginia* (1950) as amended;

9. There has been no delay in making this application;

10. The fugitive was arrested in **(rendering jurisdiction)** and is being held by authorities, according to the information received from ( **locality)**.

Respectfully submitted this_____day of_____, 2001.

_____,
Commonwealth's Attorney for the City/County of **(jurisdiction)**, Virginia

**APPLICATION FOR THE RETURN OF FUGITIVES CHARGED WITH VIOLATION OF PAROLE**

Commonwealth of Virginia:
City/County of_____:

To His Excellency, the Governor of Virginia:

I, **(Parole Board Chair's Name)**, Chairman of the Parole Board for the Commonwealth of Virginia, Richmond, Virginia, respectfully request and make application for requisition on the arrest and rendition of **(name and aliases of fugitive)** who was convicted of a felony in the Commonwealth of Virginia, paroled and thereafter violated parole by absconding.

In support of this application, I certify that:

1. The full name of the person for whom requisition is asked is **(name and aliases of the fugitive)**;

2. The crime for which he was convicted is_____.

3. That I have carefully examined the case, and believe that the facts stated in the accompanying proof are true and that the ends of public justice require that the fugitive be brought back to the Commonwealth at public expense;

4. The territory in which the fugitive is believed to be is **(rendering jurisdiction)**;

5. The location of the fugitive at the time the application is made is **(specific address)**;

6. This application is made in good faith and not for the purpose of enforcing the collection of a debt or for removing the fugitive to a foreign jurisdiction with a view there to serve him with civil process or for any private purpose whatever, and that if the fugitive is returned to the Commonwealth, the proceeding shall not be used for any of the said objects;

7. There has not been as far as I am informed any former application for a requisition for the same person for the same offense which is the basis of this application;

8. The fugitive is a fugitive from Virginia under the following set of facts. He was convicted in the **(list local court)** for **(list crime(s))**. He was granted parole subject to the usual conditions of parole on ( **date)**, before completion of the sentence and was released from the Virginia Department of Corrections on parole. On **(date)**, reliable information having been presented to

the Virginia Parole Board that the fugitive had violated the conditions of his parole, a warrant was issued for his arrest by virtue of the authority vested in the Virginia Parole Board by Title 53.1, Chapter 4, *Code of Virginia* (1950) as amended;

9. In support of this application are attached certified copies of the above mentioned conviction and sentence by the **(sentencing court)**, the indictment of which such conviction was found, a copy of the warrant of the Virginia Parole Board, and the Condition of Parole, and each such copy is properly authenticated in accordance with the laws of the commonwealth of Virginia; and that I have carefully examined these copies of the indictment, the conviction, the warrant, and the Conditions of Parole.

I nominate and propose **(names of agent(s))**, employees of the Virginia Department of Corrections, for designation as agents of the commonwealth, and represent that **(names of agent(s))** are proper persons for such designation to return the fugitive to the Commonwealth, and have no private interest in the arrest of the fugitive other than the discharge of their duties as Officers of the law.

Respectfully submitted this_____day of_____, 2001.

_____,
Chair, Virginia Parole Board

**CERTIFICATE FORMAT FOR COPY OF INDICTMENT, WARRANT, ETC.**

Commonwealth of Virginia:
City/County of_____:

I,_____, Clerk of the_____Court of the City/County of _____, Virginia, certify that the copy of the affidavit and warrant hereto attached are true and correct copies of the affidavit and warrant issued against (**name of fugitive and aliases)** by ( **name and official title of officer issuing warrant)** under date of_____, 2001.

_____,
Clerk of the_____Court,
City/County of_____, Virginia

(SEAL OF THE COURT)

**CERTIFICATE FORMAT FOR JUDGE AS TO THE OFFICIAL CHARACTER OF THE CLERK**

Commonwealth of Virginia:
City/County of_____:

I,_____, Judge of the_____Court of the City/County of _____, Virginia, certify that (**name of the Clerk of the Court)**, whose name is signed to the foregoing certificate, is, and was at the time of the signing, the same Clerk of the Court duly qualified, that his/her attestation is in due form of law, and that his/her signature is genuine.

Given under my hand, this_____day of_____, and 2001.

_____
Judge of the _____Court of the City/County of _____, Virginia

**CERTIFICATE FORMAT FOR CLERK OF THE COURT AS TO THE OFFICIAL CHARACTER OF THE COMMONWEALTH'S ATTORNEY**

Commonwealth of Virginia:
City/County of_____:

I,_____, Clerk of the_____Court of the City/County of _____, Virginia, certify that (**name of the Commonwealth's Attorney)**, whose genuine signature is affixed to the foregoing certificate is, and was at the time of signing the same, Commonwealth's Attorney for the City/County of_____. I further certify that **(name of the Commonwealth's Attorney)**, Commonwealth's Attorney for the City/County of_____, appeared before me this day, and, after being duly sworn, stated that the facts contained in the foregoing petition were true to the best of his knowledge and belief.

In testimony whereof I have hereunto set my hand and affixed the seal of the court at my office, this_____day of_____, 2001.

_____,
Clerk of the_____Court of the City/County of_____, Virginia

(SEAL OF THE COURT)

**FORMAT FOR AGREEMENT BETWEEN COMMONWEALTH'S ATTORNEY AND THE ARMED FORCES**

_____
(Date)

To Whom It May Concern:

For the delivery of (**name of fugitive, grade, service number, and branch of armed forces)** to (**law enforcement agency)** at (**county/city)**, Virginia, for trial on the charge of - _____.

I agree, pursuant to the authority vested in me as Commonwealth's Attorney for the City/County of_____, Virginia, that the commanding officer in charge of the **(branch of service, name of base or station, city and state)** and the Secretary of the **(branch of service; name of base or station; location)** will be informed of the trial's outcome and that **(name of fugitive)** will be returned to **(name of branch of service)** authorities at the place of delivery named above, or to such other place as may be designated by the **(name of branch of service)**, or issued transportation to **(name and location)**, the nearest receiving ship, station or base, without expense to the United States or to the person delivered, immediately on the completion of the trial if the person is acquitted, or immediately on satisfying the sentence of the court is he is convicted and a sentence imposed, or another disposition made of this case, provided **(name of branch of service)** authorities then desire his return.

_____
(signature of Commonwealth's Attorney)

**(typed name of Commonwealth's Attorney)**

# APPENDIX B

# OTHER STATES' SPECIAL REQUIREMENTS AND TIME LIMITS

# SPECIAL STATE REQUIREMENTS

Individual states and territories have introduced special requirements with which the demanding jurisdiction must comply to facilitate extradition. These additional requirements are as follows:

| STATE | REQUIREMENTS |
|---|---|
| Alabama | The warrant must be based on the charging document.<br>Where extradition is sought in a matter involving non-fugitivity, extradition packages must include an indictment. |
| Alaska | The extradition package must include a full showing of probable cause. This may be accomplished in one of the following ways:<br>1. An indictment, a preliminary hearing finding or order, or a document showing on its face that a judicial officer has found probable cause.<br>2. An arrest warrant, along with a copy of the statute, court rule or appellate opinion which requires that probable cause be found prior to issuance of a warrant.<br>3. An affidavit made before a magistrate establishing probable cause by a witness with personal knowledge of the facts. |
| Arizona | Inclusion of photographs and photo affidavit or certified fingerprints. |
| Arkansas | Must show probable cause. I.D. required-photo and/or fingerprints. |
| California | Identification required. |
| Colorado | Judicial finding or probable cause.<br>Prefer certified photo and fingerprints or legible drivers license photo.<br>Will accept electronically transmitted or faxed documents.<br>See C.R.S. 16-19-108 in emergency situations. |
| Connecticut | Probable cause required.<br>Photograph or fingerprints required.<br>Private Prisoner Transportation Services as sole nominated agents will not be honored. |

| | |
|---|---|
| | In case where fugitive is female, female agent must be named. |
| Delaware | Must include showing of probable cause. |
| District of Columbia | Must include showing of probable cause. |
| Florida | If extradition is based in whole or in part on a conviction, the package must include a judgement signed by the judge. If this document is not available, an affidavit by a judge as to the judgement and sentence will suffice. Showing of probable cause is also required. |
| Georgia | Must include identification. |
| Idaho | Documents must include the warrant and statement of probable cause. |
| Illinois | Identification photos, prints, physical description required. |
| Iowa | Documents must include the warrant and identification. |
| Kansas | Identification required<br>Must have judicial finding of probable cause. If relying on an information as charging document, it must be supported by an affidavit of probable Cause<br>Copies of Statues. |
| Kentucky | For parole violators, affidavit should state how terms were broken, circumstances surrounding case, etc.<br>Kentucky has adopted the Uniform Child Custody Jurisdiction Act UCCJA-, KRS 403.400-403.630 and the Uniform Interstate Family Support Act, KRS 407.5101-407.5902. Procedures available under these Acts should be utilized, if possible before extradition is considered. |
| Louisiana | Identification is required; photograph/fingerprints or physical description. |
| Maine | Must include identification and showing of probable cause. |

| | |
|---|---|
| Maryland | Must include identification, copy of the statute violated, and a female agent to transport a female fugitive. |
| Michigan | I.D. required; photo, fingerprints and/or detailed physical description. |
| Minnesota | Must include showing of probable cause. |
| Mississippi | Must include identification. |
| Missouri | Identification required.<br>If relying on an information as the charging document, it must be Supported by an affidavit of probable cause made before a magistrate. |
| Nebraska | Private Transportation Company not accepted as agent. Sworn officers only.<br>I.D. required.<br>Female fugitive requires designation of female agent. |
| Nevada | Must include identification & a warrant based on charging document.<br>IAD Article IV requests form V must contain either the signature of the Governor or the Agreement Administrator acting on the Governor's behalf. |
| New Hampshire | If the documents do not contain an indictment, the warrant must contain a determination of probable cause. Identification is required. |
| New Jersey | Must include: a) Identification, b) Showing of probable cause, c) copy of statute violated, d) Location of fugitive in New Jersey (cover letter), and e) A female agent to transport a female fugitive. |
| New Mexico | The warrant must be based on the charging document. The package or warrant must include a finding of probable cause. A female agent must be named to transport a female fugitive. |
| New York | Specific designation of agent by name, title and agency.<br>Name of female agent for a female fugitive. |

| | |
|---|---|
| | Proper identification, copy of statutes violated. |
| North Carolina | The warrant must be based on the charging document. The agent must be designated by name. |
| Ohio | Must include showing of probable cause and identification. A female agent must be named for a female fugitive. |
| Oklahoma | A female agent must be named for a female fugitive. |
| Pennsylvania | Identification is required. |
| Puerto Rico | Private prisoner transportation services will not be honored. A female agent must be named for a female fugitive. Specific designation of the agents is required by name and title.<br>Photo and prints are required. |
| Rhode Island | A female agent must be named for a female fugitive. The warrant must be based on the charging document. |
| Tennessee | Identification for extradition and detainer are required. |
| Texas | Private transport companies like Transcor are not allowed.<br>Designation of female agent required for female fugitive.<br>When the basis of the extradition request is an affidavit made Before a magistrate together with a warrant issued thereupon, The warrant must be dated the same as the affidavit.<br>Photo Id and/or fingerprints required.<br>Governor's warrants expire within 1 year of issuance. |
| Utah | Please put Lieutenant Governor in place of Secretary of State on all Executive Agreements. |
| Vermont | The demanding state must indicate in the cover letter the location of the fugitive in Vermont. Identification and a probable cause affidavit in there is no indictment is required. |
| Virgin Islands | The demanding state must indicate in the cover letter the location |

| | |
|---|---|
| | of the fugitive in the Virgin Islands. |
| Wisconsin | Extradition documents must include a showing of probable cause or an arrest warrant issued by a judge or magistrate. |

# OTHER STATES' EXTRADITION TIME LIMITS

The number of days available to perfect a governor's warrant varies in each state. The following table is used as a general guide to determine the *maximum* number of days in each state before the fugitive charge will be dismissed.

| STATE | NUMBER OF DAYS |
|---|---|
| Alabama | 60 (from arrest) |
| Alaska | 90 |
| Arizona | 90 |
| Arkansas | 60 |
| California | 90 |
| Colorado | 90 |
| Connecticut | 90 |
| Delaware | 90 |
| Florida | 90 (from arrest) |
| Georgia | 90 |
| Hawaii | 90 (from arrest) |
| Idaho | 60 |
| Illinois | 60 (Cook County/Chicago allows 90) |
| Indiana | 90 (Vigo County allows 30 days from date of arrest) |
| Iowa | 90 |
| Kansas | 90 |
| Kentucky | 90 |
| Louisiana | 30 days from arrest to start proceedings, then up to 90 |
| Maine | 90 |
| Maryland | 60 |
| Massachusetts | 90 (from arrest) |
| Michigan | 90 |
| Minnesota | 90 (from arrest) |
| Mississippi | 90 |
| Missouri | 90 |
| Montana | 90 |
| Nebraska | 60, 90 under special circumstances |
| Nevada | 30 days from arrest to start proceedings, then up to 90 |
| New Mexico | 60 (except Santa Fe County is 30) |
| New Hampshire | 90 |
| New Jersey | 90 |
| New York | 90 (from arrest) |
| North Carolina | 90 (from arrest) |
| North Dakota | 90 |
| Ohio | 60 |

| | | |
|---|---|---|
| Oklahoma | 90 | |
| Oregon | 90 (for most) | |
| | Clackamas County | 30 |
| | Curry County | 30 to start, then 30 more |
| | Douglas County | 45 |
| | Jackson County | 45 |
| | Lane County | 30 |
| | Lincoln County | 45 |
| | Linn County | 30 |
| | Marion County | 14 to start, then 14 to 21 more |
| | Multnomah County | 30 |
| | Wasco County | 30 (from arraignment) |
| | Washington County | 30 (from arraignment) |
| Pennsylvania | 90 | |
| Rhode Island | 90 | |
| South Carolina | 90 | |
| South Dakota | 90 (except Moody County is 30) | |
| Tennessee | 90 | |
| Texas | 90 if in custody; no time limit usually if on bail or bond | |
| Utah | 60 | |
| Vermont | 90 | |
| *Virginia | 90 | |
| Washington | 90 | |
| Washington, D.C. | 30 | |
| West Virginia | 30, then 60 more if paperwork is started | |
| Wisconsin | 90 (from arrest) | |
| Wyoming | 90 | |

NOTE: The time limits may vary from the date of arrest, date of arraignment, or date that identification is established.

* Cases transferred under the Interstate Compact for Adult Offender Supervision must be retaken/picked-up within 30 calendar days of the notice to the other state that the offender is being held solely on their warrant and there are no other pending criminal cases or sentences to be served.

# APPENDIX C

# REQUISITION APPLICATIONS CHECKLIST

**REQUISITION APPLICATION ATTACHMENTS CHECKLIST**

# WARRANT

**GENERAL DISTRICT COURT AND**
**JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT (Adult)**

| | |
|---|---|
| | Certified copy of warrant<br>If it is a failure to appear, certified copy of FTA warrant and arresting warrant |
| | Affidavit or Criminal Complaint sworn before judge or magistrate. **NOTE:** If fugitive is in ***New York, New Jersey or Texas*** the affidavit or criminal complaint must be dated the same date or pre-date the warrant |
| | Photograph **NOTE:** If you do not have a mug shot and the asylum state requires photo ID in the requisition - obtain photo from arresting agency and do a photo affidavit or obtain photograph from DMV |
| | Fingerprints (if available) |
| | Copy of statute that defines the crime or crimes for which the fugitive is charged |
| | |
| | |
| | |

# INDICTMENT - Circuit Court

| | |
|---|---|
| | Certified copy of Capias |
| | Certified copy of Indictment |
| | Photograph **NOTE:** If you do not have a photograph on file and the asylum state requires photo ID in the requisition - obtain photograph from arresting agency and do a photo affidavit or obtain photograph from DMV |
| | Fingerprints (if available) |
| | Copy of statute that defines the crime or crimes for which the fugitive is charged |
| | |
| | |
| | |

**VIOLATION OF PROBATION -**

# Circuit Court

| | |
|---|---|
| | Certified copy of capias |
| | Certified copy of indictment(s) |
| | Certified copy of conviction/sentencing order(s) |
| | Certified copy of letter from Probation and Parole stating violation and requesting revocation |
| | Photograph |
| | Fingerprints |
| | |
| | |

# NON SUPPORT EXTRADITION

| | |
|---|---|
| | Certified copy of warrant for non-support |
| | Affidavit that all civil remedies have been exhausted (most Governors require such a showing before they will honor an extradition request and the affidavit should trace the procedural history of the case in support of the allegation that civil remedies have been tried at least 60 days prior to the application or that they would be futile) |
| | Certified copy of order imposing support obligation |
| | Fingerprints (if available) |
| | Photograph **NOTE:** If you do not have a photograph and the asylum state requires photo ID in the requisition - obtain photograph from arresting agency and do a photo affidavit or obtain a photograph from DMV |
| | |
| | |
| | **NOTE: Virginia only issues a misdemeanor warrant for non-support. Some asylum states will not arrest your defendant on a fugitive charge because it is not an offense punishable by more than 12 months in jail. (EXAMPLE: New York and New Jersey)** |
| | |

# APPENDIX D

# TRAVEL ORDER REQUEST POLICY AND FORM

# TRAVEL ORDER REQUESTS POLICY

1) The travel order must be **requested and approved before the officers leave** to pick up the fugitive. If travel occurs prior to approval, reimbursement will not be made.

2) No travel order will be issued before the fugitive waives extradition.

3) When requesting a travel order for the purpose of returning a fugitive to Virginia, please provide the Secretary of the Commonwealth's Office with the following information:
   A) The name and gender of the defendant
   B) The defendant's charge(s) in your jurisdiction
   C) The city/county and state where the fugitive is being held
   D) The titles, full names and gender of the officers who will be transporting the fugitive
   E) The date the fugitive signed the waiver of extradition and copy of the waiver
   F) The date the officers will commence travel

4) One of the officers must be of the same gender as the fugitive before authorization can be given.

5) Only authorized Virginia Law Enforcement Officers can be sent to return fugitives to the Commonwealth of Virginia.

6) The travel order cannot be issued for family members who accompany law enforcement officers on extradition trips unless that member is an authorized law enforcement officer.

7) The officer is to pick up the fugitive as soon as possible after the asylum state says transfer is appropriate and should return forthwith to the demanding jurisdiction. Careful consideration should be given to the most efficient method of travel. Security concerns always take precedence.

8) If an officer substitution must be made, please notify this office before the trip is taken.

9) Requests for duplicate travel orders must be made in writing stating the reason for the requests.

10) If you desire to have the travel orders picked up instead of mailed, please get prior approval from the Secretary of the Commonwealth's Office. Travel orders not picked up by the designated day will be mailed.

11) If a Governor's requisition warrant has been requested, please notify the Secretary of the Commonwealth's Office immediately if the fugitive waives extradition so that the travel orders may be processed.

12) If you fax in the request for travel orders, please call to confirm that they have been received. Travel orders should be faxed on approved forms only. The fax number is (804) 786-1418.

13) Travel Reimbursement forms should be mailed to the Supreme Court of Virginia, Attention: Fiscal Services Department, 100 North Ninth Street, Richmond, Virginia 23219. If you have any questions concerning reimbursement, please call the Supreme Court at (804) 786-6455.

**Secretary of the Commonwealth**
**P. O. Box 2454**
**Richmond, Virginia 23218**

The travel order must be requested before the officers leave to pick up the fugitive. If an officer substitution must be made, please notify this office before travel. If you have any questions, please contact Christopher N. Frink at (804) 692-0016

**The travel request should be faxed to (804)786-9549 or emailed to** Chris.Frink@governor.virginia.gov

**TRAVEL ORDER REQUEST FORM**

Requesting Jurisdiction:
_____

Defendant's Name: _____ **M F**

Aliases:
_____

Charge(s):_____
(Not charging documents)
_____

Location of Defendant: _____
(State, City/County)

Officer(s) Authorized to Assume Custody of Defendant. **(One of the officers must be of the same gender as the fugitive):**

_____ **M F**
**Title, First and Last Name. (NOT INITIALS)**

_____ **M F**
**Title, First and Last Name. (NOT INITIALS)**

Date Defendant Waived:_____Date(s) of Travel:
_____

Request Submitted by: _____ Phone #: _____

Travel Orders are mailed to the Commonwealth's Attorney's Office unless otherwise specified.

Mail To: _____

_____

**Travel Reimbursement forms should be mailed to the Supreme Court of Virginia,**
**Attn: Fiscal Services Department, 100 N. 9th Street, Richmond, Virginia 23219. If you have any questions concerning reimbursement, please call the Supreme Court at (804)786-6455.**

# APPENDIX E

# *CODE OF VIRGINIA* EXTRADITION SECTIONS (1983 REPLACEMENT VOLUME; 1989 CUMULATIVE SUPPLEMENT)

# *CODE OF VIRGINIA*
# 19.2-84 through 19.2-118
# Extradition Sections

**Section 19.2-84. Governor to surrender on requisition of President.**
The Governor shall whenever required by the executive authority of the United States, pursuant to the Constitution and laws thereof, deliver over to justice any person found within the Commonwealth, who is charged with having committed any crime without the jurisdiction of the United States.

**Section 19.2-85. Definitions.**
When appearing in this chapter:
(1) The term "Governor" includes any person performing the functions of Governor by authority of the law of this Commonwealth;
(2) The term "executive authority" includes the Governor, and any person performing the functions of Governor in a state other than this Commonwealth;
(3) The term "State," referring to a state other than this Commonwealth, includes any other state or territory, organized or unorganized, of the United States of America, and the District of Columbia; and
(4) The term "judge" means a judge of a court of record having criminal jurisdiction.

**Section 19.2-86. Fugitives from justice; duty of Governor.**
Subject to the provisions of this chapter, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, the Governor shall have arrested and delivered up to the executive authority of any other 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 Commonwealth.

**Section 19.2-87. Form of demand.**
No demand for the extradition of a person charged with, or convicted of, crime in another state shall be recognized by the Governor unless in writing alleging, except in cases arising under § 19.2-91, that the accused was present in the demanding state at the time of the commission of the alleged crime and that thereafter he fled from such state, and accompanied: (1) by a copy of an indictment found, (2) by a copy or an information supported by an affidavit filed in the state having jurisdiction of the crime, (3) by a copy of an affidavit made before a magistrate in such state together with a copy of any warrant which was issued thereupon, or (4) by a copy of a judgment of conviction or of a sentence imposed in execution thereof together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of the indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

**Section 19.2-88. Governor may investigate case.**

When a demand shall be made upon the Governor by the executive authority of another state for the surrender of a person so charged with, or convicted of, crime, the Governor may call upon the Attorney General or any other officer of this Commonwealth to investigate or assist in investigating the demand and to report to him the situation and circumstances of the person so demanded and whether he ought to be surrendered.

**Section 19.2-89. Extradition of persons imprisoned or awaiting trial in another state.**
When it is desired to have returned to this Commonwealth a person charged in this Commonwealth with a crime and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the Governor may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this Commonwealth as soon as the prosecution in this Commonwealth is terminated.

**Section 19.2-90. Extradition of persons who have left demanding state involuntarily.**
The Governor may also surrender on demand of the executive authority of any other state any person in this Commonwealth who is charged in the manner provided in §§ 19.2-109 to 19.2-111, with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

**Section 19.2-91. Extradition of persons not in demanding state at time of commission of crime.**
The Governor may also surrender, on demand of the executive authority of any other state, any person in this Commonwealth charged in such other state in the manner provided in § 19.2-87 with committing an act in this Commonwealth, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand. The provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

**Section 19.2-92. Issuance of Governor's warrant of arrest; its recitals.**
If the Governor decides that a demand for the extradition of a person, charged with, or convicted of, crime in another state should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to the sheriff or sergeant of any county or city or to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. Any electronically transmitted facsimile of a Governor's warrant shall be treated as an original document, provided the original is received within four days of receipt of the facsimile.

**Section 19.2-93. Manner and place of execution of warrant.**
Such warrant shall authorize the officer or other person to whom it is directed to arrest the accused at any time and at any place where he may be found within the Commonwealth and to command the aid of all peace officers or other persons in the execution of the warrant and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state.

**Section 19.2-94. Assistance to arresting officer.**
Every officer or other person empowered to make the arrest, as provided in the preceding section, shall have the same authority, in arresting the accused, to command assistance therein as the sheriffs and sergeants of the several counties and cities of this Commonwealth have by law in the execution of any criminal process directed to them, with like penalties against those who refuse to render their assistance.

**Section 19.2-95. Rights of accused persons; application for writ of habeas corpus.**
No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a circuit or general district court in this Commonwealth, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge or trial justice shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the attorney for the Commonwealth of the county or city in which the arrest is made and in which the accused is in custody, and to the agent of the demanding state.

**Section 19.2-96. Penalty for noncompliance with preceding section.**
Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the Governor's warrant in willful disobedience to the last preceding section shall be guilty of a Class 1 misdemeanor.

**Section 19.2-97. Confinement in jail when necessary.**
The officer or persons executing the Governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail shall receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

**Section 19.2-98. Same; for prisoners being taken through Commonwealth.**
The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this Commonwealth with such prisoner for the purpose of returning immediately such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail shall receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping, provided, however, that such officer or agent shall deliver to the jailer the warrant or legal order authorizing custody of the prisoner. Such prisoner shall not be entitled to demand a new requisition while in this Commonwealth.

**Section 19.2-99. Arrest prior to requisition.**
Whenever: (1) any person within this Commonwealth shall be charged on the oath of any credible person before any judge, magistrate or other officer authorized to issue criminal

warrants in this Commonwealth with the commission of any crime in any other state and, except in cases arising under § 19.2-91, (a) with having fled from justice, (b) with having been convicted of a crime in that state and of having escaped from confinement, or (c) of having broken the terms of his bail, probation, or parole, or (2) complaint shall have been made before any such judge, magistrate or other officer in this Commonwealth setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under § 19.2-91, (a) has fled from justice, (b) having been convicted of a crime in that state has escaped from confinement, or (c) broken the terms of his bail, probation or parole, and that the accused is believed to be in this Commonwealth, such judge, magistrate or other officer shall issue a warrant directed to any sheriff or to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this Commonwealth, and to bring him before any judge who may be available in or convenient of access to the place where the arrest may be made, to answer the charge of complaint and affidavit. A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

**Section 19.2-100. Arrest without warrant.**
The arrest of a person may be lawfully made also by any peace officer or private person 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 so arrested the accused shall be taken before a judge, magistrate or other officer authorized to issue criminal warrants in this Commonwealth with all practicable speed and complaint made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant.

**Section 19.2-101. Confinement to await requisition; bail.**
If from the examination before the judge it appears that the person held pursuant to either of the two preceding sections is the person charged with having committed the crime alleged and, except in cases arising under § 19.2-91, that he has fled from justice, the judge shall, by a warrant reciting the accusation, commit him to jail for such a time, not exceeding thirty days, specified in the warrant as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged.

**Section 19.2-102. In what cases bail allowed; conditions of bond.**
Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, any judge, magistrate or other person authorized by law to admit persons to bail in this Commonwealth may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned upon his appearance before a judge at a time specified in such bond and upon his surrender for arrest upon the warrant of the Governor of this Commonwealth.

**Section 19.2-103. Discharge, recommitment or renewal of bail.**
If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, any judge in this Commonwealth may discharge him or may recommit him for a further period not to exceed sixty days, or such judge may again take bail for his appearance and surrender, as provided in the preceding section, but within a period not to exceed sixty days after the date of such new bond.

**Section 19.2-104. Forfeiture of bail.**
If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, any judge of a circuit or general district court by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this Commonwealth. Recovery may be had on such bond in the name of the Commonwealth as in the case of other bonds given by the accused in criminal proceedings within this Commonwealth.

**Section 19.2-105. Persons under criminal prosecution in this Commonwealth at time of requisition.**
If a criminal prosecution has been instituted against such person under the laws of this Commonwealth and is still pending, the Governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this Commonwealth.

**§ 19.2-106. When guilt or innocence of accused inquired into.**
The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime.

**Section 19.2-107. Governor may recall warrant or issue alias.**
The Governor may recall his warrant of arrest or may issue another warrant whenever he deems it proper.

**Section 19.2-108. Fugitives from this Commonwealth; duty of Governor.**
Whenever the Governor shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this Commonwealth, from the executive authority of any other state, or from the chief justice or an associate justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this Commonwealth to some agent commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county or city in this Commonwealth in which the offense was committed.

**Section 19.2-109. Application for requisition for return of person charged with crime.**
When the return to this Commonwealth of a person charged with crime in this Commonwealth is required, the attorney for the Commonwealth shall present to the Governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the

location of the accused therein at the time the application is made, and certifying that, in the opinion of the attorney for the Commonwealth, the ends of justice require the arrest and return of the accused to this Commonwealth for trial and that the proceeding is not instituted to enforce a private claim.

**Section 19.2-110. Application for requisition for return of escaped convict, etc.**
When the return to this Commonwealth is required of a person who has been convicted of a crime in this Commonwealth and has escaped from confinement or broken the terms of his bail, probation or parole, the attorney for the Commonwealth, of the county or city in which the offense was committed, or the warden of the institution or sheriff of the county or city from which the escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole and the state in which he is believed to be, including the location of the person therein at the time application is made.

**Section 19.2-111. Form of such applications; copies, etc.**
The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge of a circuit or general district court or other officer issuing the warrant stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The attorney for the Commonwealth, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the Secretary of the Commonwealth, to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

**Section 19.2-112. Costs and expenses of extradition.**
A. The expenses incident to the extradition of any person under the four preceding sections may be paid out of the state treasury, on warrants of the Comptroller issued upon vouchers signed by the Governor, or such other person as may be designated by him for such purpose.
B. If the person was extradited after illegally leaving the Commonwealth while on parole or on probation, the person extradited, and not the Commonwealth, shall be responsible for the costs and expenses of extradition. The state treasury shall continue to reimburse local jurisdictions for the costs and expenses of extradition. The fugitive shall pay the costs and expenses of his extradition into the state treasury.

**Section 19.2-113. Immunity from service of process in certain civil actions.**
A person brought into this Commonwealth by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

**Section 19.2-114. Written waiver of extradition proceedings.**
Any person arrested in this Commonwealth charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in §§ 19.2-92 and 19.2-93 and all other procedures incidental to extradition proceedings by executing or subscribing in the presence of a judge of a circuit or district court within this Commonwealth a writing which states that he consents to return to the demanding state. However, before the waiver is executed or subscribed by the person, it shall be the duty of the judge to inform the person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in § 19.2-95.
If and when such consent has been duly executed, it shall forthwith be forwarded to the office of the Governor and filed therein. The judge shall direct the officer having the person in custody to promptly deliver him to the duly accredited agent of the demanding state, and shall deliver or cause to be delivered to such agent a copy of the consent.
This section shall not be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an executive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this Commonwealth.

**Section 19.2-115. Non-waiver by this Commonwealth.**
Nothing in this chapter contained shall be deemed to constitute a waiver by this Commonwealth of its right, power or privilege to try such demanded person for crime committed within this Commonwealth, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this Commonwealth, nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this Commonwealth of any of its rights, privileges or jurisdiction in any way whatsoever.

**Section 19.2-116. No right of asylum; no immunity from other criminal prosecutions while in this Commonwealth.**
After a person has been brought back to this Commonwealth by, or after waiver of, extradition proceedings he may be tried in this Commonwealth for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

**Section 19.2-117. Interpretation of article.**
The provisions of this article shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact statutes similar thereto.

**Section 19.2-118. Short title.**
This article may be cited as the Uniform Criminal Extradition Act.
(Code 1950, § 19.1-82; 1960, c. 366; 1975, c. 495.)

# *CODE OF VIRGINIA*
# Section on the Interstate Agreement on Detainers

**Section 53.1-210.** The Agreement on Detainers is hereby enacted into law and entered into by this Commonwealth with all other jurisdictions legally joining therein in the form substantially as follows:

## THE AGREEMENT ON DETAINERS

The contracting states solemnly agree:

**ARTICLE I.**
The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trials of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.
As used in this agreement:

**ARTICLE II.**
(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.
(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.
(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

**ARTICLE III.**
(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officers' jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided 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. The request of the prisoner shall be accompanied by a certificate of the appropriate official having

custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.
(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.
(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.
(d) Any request or final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other officials having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.
(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.
(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

**ARTICLE IV.**
(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which

period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.
(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.
(c) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but 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.
(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.
(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

**ARTICLE V.**
(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.
(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:
(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.
(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.
(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.
(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.
(f) During the continuance or temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.
(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.
(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

**ARTICLE VI.**
(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.
(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

**ARTICLE VII.**
Each state party to this agreement shall designate an officer 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 operation of this agreement.

**ARTICLE VIII.**
This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a

statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

**ARTICLE IX.**

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

# APPENDIX F

# TERMINOLOGY

# TERMINOLOGY

## A. Definitions

1. Application for Requisition – the formal written request form the prosecutor to the Governor for a requisition on the Governor of the asylum state for the return of a fugitive

2. Asylum State – where the fugitive or defendant has taken refuge or is found

3. Demanding State – the state which seeks to extradite the fugitive

4. Detainer – request or notice filed by a prosecutor or other law enforcement authority with the warden or jailer where a prisoner is incarcerated, asking that the prisoner be held for prosecution or that the authority be notified when release of the prisoner is imminent

5. Extraditable Offense – any criminal offense, felony or misdemeanor, although some states do not extradite for a misdemeanor regardless of whether the offense is a crime in the asylum state

6. Extradition – the surrender, by one nation or state to another, of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which being competent to try and punish him, demands the surrender

7. Fugitive or Fugitive from Justice – person accused or convicted of a crime in one state and later found in another state, regardless of the manner or reason for his/her departure from the first state, except offenders transferred under the Interstate Compact for Adult Offender Supervision

8. Fugitive Affidavit – the demanding state's prosecutor's verified application to his Governor requesting that Governor to issue a requisition warrant for the return of a fugitive

9. Fugitive Complaint – the document filed in the asylum state, prior to receipt of the Governor's Warrant, that charges the person arrested with being a fugitive from justice

10. Fugitive Warrant – the arrest warrant issued by a judge or magistrate, prior to receipt of the Governor's warrant, authorizing the arrest and detention of the fugitive pending receipt of the Governor's warrant

11. Governor or Executive or Executive Authority – any person performing the functions of Governor under state law

12. Governor's Warrant or Governor's Warrant of Rendition – the warrant issued by the Governor of the asylum state for the arrest and detention of the accused until the agent of the demanding state arrives to return the accused to the demanding state

13. Magistrate – any judge or person certified to be a magistrate under the laws of the demanding state

14. Rendition – the return of the accused to the demanding state

15. NCIC Message – a teletype product from the National Crime Information Center (NCIC), a nationwide service available to all law enforcement agencies, conveying information relevant to criminals and criminal offenses

16. Rendition Warrant – a Governor's Warrant or a Governor's Warrant of Rendition

17. Requisition – the formal request made by the Governor of the demanding state on the Governor of the asylum state for extradition of the accused, and on which the Governor's warrant is based

18. Requisition Warrant – the request from one governor to another seeking the extradition of an individual

19. Waiver of Extradition – the intentional relinquishment by the accused of his or her right to the issuance and service of a Governor's rendition warrant, and consent to be transported to the demanding state

**B. Acronyms**

1. IAD – Interstate Agreement on Detainers

2. NCIC – National Crime Information Center

3. ICAOS– Interstate Compact for Adult Offender Supervision

4. UCEA – Uniform Criminal Extradition Act

5. UIFSA – Uniform Interstate Family Support Act

6. UICJ – Uniform Interstate Compact on Juveniles

7. URESA – Uniform Reciprocal Enforcement of Support Act

8. U. S. C. – United States Code

**9.** U. S. C. A. – United States Code Annotated

# APPENDIX G

## For International Extraditions please contact:

## The Office of International Affairs
## Criminal Division
## United States Department of Justice

Every extradition treaty is negotiated separately, and each contains different provisions. The first step in any international fugitive case should be to contact OIA. 202-514-0000

# Virginia Extradition Officials

**The Honorable Glenn Youngkin**
Governor of the Commonwealth of Virginia
Patrick Henry Building
1111 E. Broad Street, 3rd Floor
Richmond, Virginia 23219

**The Honorable Kay Coles James**
Secretary of the Commonwealth
Patrick Henry Building
1111 E. Broad Street, 4th Floor
Richmond, Virginia 23219

**The Honorable Nikki Thacker**
Chief Deputy Secretary of the
Commonwealth
Patrick Henry Building
1111 E. Broad Street, 4th Floor
Richmond, Virginia 23219

**The Honorable Jenna Moon**
Deputy Secretary of the Commonwealth
Patrick Henry Building
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**Christopher N. Frink**
Director of Extraditions
Secretary of the Commonwealth's Office
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***Mailing address***:
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Phone: (804) 692-0116
Fax: (804) 786-9549
E-mail: chris.frink@governor.virginia.gov

***Please send an original and two copies of all extradition documents and attachments directly to Christopher N. Frink.***

## Office of the Attorney General

Laura Maughan
Assistant Attorney General
Extraditions &
Interstate Agreement on Detainers Administrator
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## Supreme Court of Virginia

John Rickman
Mary Gilbert
Dept. of Fiscal Services
100 N. 9th St.
3rd Floor
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Fax: (804) 786-0196
E-mail: mgilbert@courts.state.va.us

## Virginia Department of Corrections

6900 Atmore Drive
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