

1985

Joseph Russell Norton v. N. D. (Pete) Hayward, Salt Lake County Sheriff : Brief of Appellant

Utah Supreme Court

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T.L. \"Ted\" Cannon; Salt lake County Attorney; Attorney for Respondent.

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IN THE SUPREME COURT OF THE STATE OF UTAH

JOSEPH RUSSELL NORTON,)	
)	
Petitioner-Appellant,)	
)	
vs.)	
)	
N.D. (Pete) HAYWARD,)	
Salt Lake County Sheriff,)	Case No. 20875
)	
Respondent-Respondent.))	

BRIEF OF APPELLANT JOSEPH RUSSELL NORTON

APPEAL FROM THE RULING OF THE THIRD
JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY,
STATE OF UTAH, HONORABLE LEONARD H. RUSSON

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594 P.2d 885 (Utah 1979) 6

STATUTES CITED:

UTAH CODE ANN. (1953)

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§77-29-1 1, 4, 5
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IN THE SUPREME COURT OF THE STATE OF UTAH

JOSEPH RUSSELL NORTON,)	
)	
Petitioner/Appellant,)	
)	
vs.)	
)	
N.D. "Pete" HAYWARD,)	
Salt Lake County Sheriff,)	Case No. 20875
)	
Respondent-Respondent.))	

BRIEF OF APPELLANT JOSEPH RUSSELL NORTON

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Appellant presents two issues for review by this Court:

1. Should the State of Colorado be barred from extraditing the Appellant because of the failure of the Utah State Prison and the State of Colorado to comply with the provisions of the Disposition of Detainers Against Prisoners Act, UTAH CODE ANN. §§77-29-1 & 2 (1953)?

2. Should the Appellant be released on his Writ of Habeas Corpus because the conditions at the Salt Lake County jail deprive him of his right to be free from cruel and unusual punishment under the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States?

STATEMENT OF THE CASE

On February 20, 1985, the Appellant filed a Petition for Writ of Habeas Corpus challenging the legality of his confinement in the Salt Lake County Jail on a charge of being a fugitive from justice from the State of Colorado. (R. p.2,3). The matter came on for evidentiary hearing on March 12, 1985 before the Honorable Leonard H. Russon. After hearing the evidence and arguments of counsel for Appellant and Respondent, the Honorable Leonard H. Russon denied the Appellant's Petition. (R.p.4). The Appellant now appeals to the Supreme Court of the State of Utah seeking a reversal of Judge Russon's Order dismissing the Appellant's Petition for Writ of Habeas Corpus. (R. p.8,9).

STATEMENT OF FACTS

Between November 16, 1982 and July 10, 1984, the Appellant was incarcerated in the Utah State Prison. (R.p.22; Tr. of Writ of Habeas Corpus Hearing). During that period, the Appellant contends that there was an outstanding warrant out of the State of Colorado for the Appellant. (R. p.20, l. 20-25; R. p.22, l. 6-21; Tr. of Writ of Habeas Corpus Hearing). However, the State of Colorado had not filed a detainer against the Appellant concerning the Colorado charges while the Appellant was at the Utah State Prison. (R. p.20, l.25, p.21, l. 1-8; Tr. of Writ of Habeas Corpus Hearing). Consequently, the Warden of the Utah State Prison did not inform the Appellant in writing of the outstanding charge from Colorado and of the Appellant's right to make

a request for a final disposition under the Disposition of Detainers Against Prisoners Act, UTAH CODE ANN. §77-29-1 et seq. (1953). Almost five (5) months after the Appellant was released from the Utah State Prison, he was arrested on a fugitive warrant originating out of the State of Colorado. (R. p. 22, l. 15-20; Tr. of Writ of Habeas Corpus Hearing). On February 7, 1985, a governor's warrant was issued against the Appellant concerning the Colorado fugitive warrant. (R. p. 22, l. 25; p. 23, l. 1-2; Tr. of Writ of Habeas Corpus Hearing; Addendum to Appellant's Brief, Exhibit A).

At the time of the Habeas Corpus Hearing, the Appellant presented a statement alleging that the conditions at the Salt Lake County Jail are subjecting him to cruel and unusual punishment. (R. p. 26, l. 5-23; Tr. of Habeas Corpus Hearing). No other evidence was taken by the District Court concerning the Appellant's claim of cruel and unusual punishment.

SUMMARY OF ARGUMENTS

The Appellant contends that the failure of the State of Colorado and the Warden of the Utah State Prison to comply with the provisions of the Disposition of Detainers Against Prisoners Act, UTAH CODE ANN. §§77-29-1 et seq. (1953) has substantially frustrated the Appellant's rehabilitation within the criminal justice system, and has therefore defeated the purposes and policies set forth in Article One of the Interstate Agreement on Detainers, UTAH CODE ANN. §77-29-5 (1953).

Consequently, the Appellant argues that fundamental fairness dictates that the State of Colorado should not be allowed to proceed with their charges against the Appellant.

Further, the Appellant asserts that the conditions at the Salt Lake County Jail are resulting in a denial of the Appellant's constitutional right to be free from cruel and unusual punishment, and therefore the Appellant should be released from the jail.

ARGUMENT

POINT I: THE FAILURE OF THE STATE OF COLORADO
AND THE WARDEN OF THE UTAH STATE PRISON
TO COMPLY WITH THE DISPOSITION OF
DETAINERS AGAINST PRISONERS ACTS BARS
THE COLORADO EXTRADITION PROCEEDINGS.

At the time of the filing of the Petition for Writ of Habeas Corpus in this matter, the Appellant believed that the State of Colorado had filed a detainer against him while he was at the Utah State Prison. (R. p.20, 1, 20-25; Tr. of Writ of Habeas Corpus Hearing). Based upon the belief that a detainer was in place while he was in prison, the Appellant argued that the Warden of the Utah State Prison breached his duty to the Appellant by failing to inform him of the Colorado charge and of his right to make a request for a final disposition. The Appellant further argued that as a result of the Warden's failure to give him written notice pursuant to UTAH CODE ANN. §77-29-1 (1953), he was denied a 120 day disposition under UTAH CODE ANN. §77-29-1 (1953). The

Appellant then argues that the Colorado charge should now be dismissed with prejudice pursuant to UTAH CODE ANN. §77-29-1 (4)(1953) because the charge was not disposed of within 120 days because of the fault of the Warden at the Utah State Prison.

Subsequently, counsel for Appellant ascertained that Colorado had not filed a detainer against the Appellant while he was at the Utah State Prison. (R. p. 20, l. 20-25; p.21, l. 1-1; Tr. of Writ of Habeas Corpus Hearing). However, the Appellant still feels that equitable grounds exist for the dismissal of the Colorado charge, and the consequent release of the Appellant from the Salt Lake County jail on his Writ of Habeas Corpus.

ARTICLE I of the Interstate agreement on detainers, UTAH CODE ANN. §77-29-5 (1953) provides:

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial 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.

By failing to file a detainer against the Appellant while he was at the Utah State Prison, the State of Colorado has frustrated the policies stated above. At the time of his arrest, the Appellant was well on his way back to becoming a law-abiding, productive member of society. But because of the Colorado charge which is presently holding the Appellant in jail, his rehabilitation has been interrupted. Because Colorado made a conscious decision not to file a detainer and to ignore the policies stated in the Disposition of Detainers Against Prisoners Act, it should not be allowed to come after the Appellant subsequent to his release from prison.

In making the above arguments, counsel for Appellant is aware of recent Utah Supreme Court cases which set forth the controlling law concerning habeas corpus challenges after a governor's warrant has been issued, including the following cases: Phillips v. Vance, 594 P.2d 885 (Utah 1979); Langley v. Hayward, 656 P.2d 1020 (Utah 1982); and Emig v. Hayward, 14 Utah Advance Reports 8, Case No. 18823, filed July 15, 1985 (Utah).

POINT II. THE APPELLANT SHOULD BE RELEASED
FROM THE SALT LAKE COUNTY JAIL
BECAUSE THE CONDITIONS THEREIN
DENY HIM HIS CONSTITUTIONAL RIGHT
TO BE FREE FROM CRUEL AND UNUSUAL
PUNISHMENT.


At the hearing in this matter held on the date of March 12, 1985, the appellant was allowed to make a statement to the court regarding his incarceration in the Salt Lake County jail (R. p. 25-26; Tr. of Writ of Habeas Corpus Hearing). In the statement, the Appellant alleged that his confinement in the jail has resulted in the denial of his constitutional right to be free from cruel and unusual punishment. No other evidence was taken by the District Court regarding the Appellant's allegations. The thrust of the Appellant's statement is that he should be released from the Salt Lake County jail because his confinement therein has resulted in the denial of his rights guaranteed under the Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States.

CONCLUSION

Based upon the above arguments raised by the Appellant, it is respectfully requested that this Court reverse the decision of the lower court denying the Appellant's Petition for Writ of Habeas Corpus, thereby releasing the Appellant from custody in the Salt Lake County jail. The Appellant further requests the Court to order that the fugitive proceedings against him be dismissed with prejudice.

Respectfully submitted this 2 day of December,
1985.

Salt Lake Legal Defender Association


KERRY P. EAGAN
Attorney for Appellant

CERTIFICATE OF DELIVERY

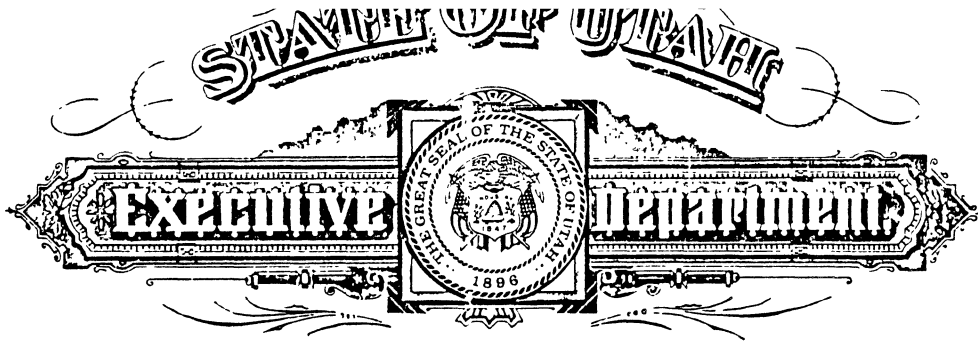
I hereby certify that on the 2 day of December,
1985, I hand delivered four (4) copies of the Appellant's
Brief to the office of:

T.L. "Ted" Cannon
Salt Lake County Attorney
By: Richard S. Shepherd
Deputy Salt Lake County Attorney
231 East Fourth South
Salt Lake City, Utah 84111


KERRY P. EAGAN

ADDENDUM

Exhibit A - Governor's Warrant



To the Sheriffs, Deputy Sheriffs and other officers of and in the several cities and counties of this State:

Whereas, It has been represented to me by the Governor of the State of COLORADO that JOSEPH RUSSELL NORTON

stands charged with the crime of SEXUAL ASSAULT ON A CHILD, PATRONIZING PROSTITUTION OF CHILD, SECOND DEGREE KIDNAPPING, CRIMINAL which he certifies to be crimes ATTEMPT PATRONIZING PROSTITUTION OF A CHILD under the laws of said State, committed in the County of DENVER

in said State; and that he has fled from the justice of said State and has taken refuge in the State of Utah; and the said Governor of said State having, in pursuance of the Constitution and Laws of the United States, demanded of me that I shall cause the said

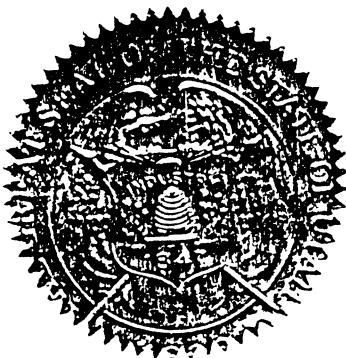
JOSEPH RUSSELL NORTON to be arrested and delivered to MOSE TRUJILLO AND OR AUTHORIZED AGENTS who is duly authorized to receive HIM into his custody and convey HIM back to the said State of COLORADO; and,

Whereas, the said requisition is accompanied by a copy of the COMPLAINT/INFORMATION WARRANT; AFFIDAVIT; AND SUPPORTING DOCUMENTS whereby the said

charged with the said crime, certified by the said Governor as authentic.

Wherefore, You are required to arrest and secure the said JOSEPH RUSSELL NORTON

wherever HE may be found within this State, and afford HIM such opportunity to sue out a writ of habeas corpus as is prescribed by the laws of this State, and to thereafter deliver HIM into the custody of the said MOSE TRUJILLO AND OR AUTHORIZED AGENTS to be taken back to the said State from which HE fled, pursuant to the said requisition, the said MOSE TRUJILLO AND OR AUTHORIZED AGENTS paying all proper costs and fees for the arrest, detention and delivery of the said fugitive.



Given under my hand, and the Great Seal of the State, in the City of Salt Lake, this SEVENTH day of FEBRUARY in the year of our Lord one thousand nine hundred and EIGHTY FIVE

Wm. A. Bangs
BY THE GOVERNOR

W. Val Ores
LIEUTENANT GOVERNOR



EXECUTIVE DEPARTMENT

THE GOVERNOR OF THE STATE OF COLORADO,

To All to Whom These Presents Shall Come—Sends Greeting

Know YE, That I, NANCY DICK

Acting Governor of the State of Colorado, have authorized and empowered, and by these PRESENTS do authorize and empower Mose Trujillo and/or agent

as Agent on the part of this State to receive from the proper authorities of the STATE OF UTAH

JOSEPH RUSSELL NORTON

fugitive from justice, and convey him to this State to be dealt with according to law. All persons are therefore requested to permit the said Agent at his own proper cost, to remove the said JOSEPH RUSSELL NORTON

and to transport him unmolested into this State, the said Agent peaceably and lawfully behaving.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State to be affixed.

Done at Denver, this 24th day of January one thousand nine hundred and eighty-five

By the ~~Governor~~ ACTING GOVERNOR

Nancy Dick

~~Secretary of State~~
Deputy

Secretary of State

Exhibit B - Findings of Fact, Conclusions
of Law, Judgment and Order

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JOSEPH RUSSELL NORTON)	
Petitioner,)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
vs.)	
N. D. "PETE" HAYWARD,)	Case No. C85-1298
Salt Lake County Sheriff,)	Honorable Timothy R. Hanson
Respondent.)	

The above-entitled matter came on for hearing before the Honorable Timothy R. Hanson, judge of the above-entitled Court, on the 12th day of March, 1985, the petitioner appearing by and through Thomas J. McCormick, and respondent appearing by and through Richard S. Shepherd, Deputy Salt Lake County Attorney; and the Court having received in evidence certified copies of those documents relating to the extradition of Joseph Russell Norton, the originals of which are on file in the Lieutenant Governor/Secretary of State's Office, and having heard arguments of counsel; and being fully advised in the premises, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. That the petitioner, Joseph Russell Norton has been charged by complaint in the State of Colorado with the crime of Sexual Assault and petitioner's extradition for this crime has been sought by the Governor of the State of Colorado.

2. That the petitioner has not placed in issue the following: (a) that petitioner is the person charged; (b) that petitioner was present in the State of Colorado when the crime charged was committed; or (c) that the charge constitutes a crime under the laws of the state of Colorado.

3. That the documents presented to the Governor of the State of Utah by the Governor of the State of Colorado in support of extradition of the petitioner are on file with the Lieutenant Governor/Secretary of State, and certified copies of the same were received by the Court in evidence.

4. That the petitioner contended that he should not be returned to the State of Colorado because (a) petitioner was not informed by the warden of the Utah State Prison that there was a charge pending; and (b) no detainer was lodged against the petitioner.

CONCLUSIONS OF LAW

1. That the documents on file with the Lieutenant Governor/Secretary of State are legally sufficient under the laws of the State of Utah for the extradition of petitioner,

Joseph Russell Norton, to Colorado as requested by the Governor of that state.

2. That where a detainer was not lodged by the demanding state of Colorado, there was no obligation to notify the petitioner of the outstanding charges.

3. That the petitioner's Writ of Habeas Corpus should be denied and the petitioner returned to the State of Colorado, however a stay is granted to allow the petitioner to perfect his appeal to the Utah Supreme Court.

DATED this 31st day of July, 1985.

BY THE COURT

/s/
~~TIMOTHY R. HANSON, Judge~~
LEONARD H. RUSSON

I hereby certify that I delivered a true and correct copy of the foregoing Findings of Fact and Conclusions of Law this _____ day of July, 1985, to Thomas J. McCormick, attorney for petitioner, by depositing same in the Legal Defender box located in the County Attorney's Office.

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JOSEPH RUSSELL NORTON)	
Petitioner,)	JUDGMENT AND ORDER
)	OF DISMISSAL
vs.)	
N. D. "PETE" HAYWARD,)	Case No. C85-1298
Salt Lake County Sheriff,)	Honorable Timothy R. Hanson
Respondent.)	

The above-entitled matter having come on for hearing before the Honorable Timothy R. Hanson, one of the judges in the above-entitled Court, petitioner appearing by and through Thomas J. McCormick, petitioner's attorney, and respondent appearing by and through his attorney, Richard S. Shepherd, and the Court having heard the evidence and argument, and having heretofore entered its Findings of Fact and Conclusions of Law, and being fully advised in the premises:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that petitioner's petition should be and is hereby dismissed, and petitioner is ordered returned to the custody of N. D. "Pete" Hayward, the Sheriff of Salt Lake County until such time as he

Judgment and Order of Dismissal
C85-1298
Page 2

may be expediently returned to the State of Colorado pursuant to legal process.

DATED this 31st day of July, 1985.

BY THE COURT

/s/
~~TIMOTHY R. HANSON~~, Judge
LEONARD H. RUSSON

Delivered a copy of the foregoing Judgment and Order of Dismissal this _____ day of July, 1985, to Thomas J. McCormick, attorney for petitioner, by depositing same in the Legal Defender box located in the Salt Lake County Attorney's Office.

Exhibit C - Disposition of Detainers Against Prisoners Act,
UTAH CODE ANN. §§77-29-1 et seq.(1953)

contracts for the confinement of inmates in said institutions pursuant to Article III of that Compact.

History: C. 1953, 77-28a-2, enacted by L. 1982, ch. 38, § 1.

77-28a-3. Duties and powers of courts, departments, agencies and officers in enforcing and effecting compact. The courts, departments, agencies and officers of this state and its political subdivisions shall enforce this Compact and shall do all things necessary and appropriate to the effectuation of the purposes and intent of this Compact which may be within their respective jurisdictions including, but not limited to, the making and submission of any reports required by that Compact.

History: C. 1953, 77-28a-3, enacted by L. 1982, ch. 38, § 1.

77-28a-4. State board of pardons — Authority to hold hearings. The board of pardons is hereby authorized and directed to hold such hearings as may be requested by any other party state pursuant to subparagraph (a) of Article IV of the Interstate Corrections Compact. The board is further authorized to travel to any state which is a party to that Compact and to which an inmate is sent for confinement, for the purpose of holding any hearing to which that inmate is entitled by the laws of the State of Utah.

History: C. 1953, 77-28a-4, enacted by L. 1982, ch. 38, § 1.

77-28a-5. Governor — Power to enter into contracts. The governor is hereby empowered to enter into such contracts on behalf of this state as may be appropriate to implement its participation in the Interstate Corrections Compact, pursuant to Article III thereof. No such contract shall be of any force or effect until approved by the board of examiners.

History: C. 1953, 77-28a-5, enacted by L. 1982, ch. 38, § 1.

CHAPTER 29

DISPOSITION OF DETAINERS AGAINST PRISONERS

Section

- 77-29-1. Prisoner's demand for disposition of pending charge — Duties of custodial officer — Continuance may be granted — Dismissal of charge for failure to bring to trial.
- 77-29-2. Duty of custodial officer to inform prisoner of untried indictments or informations.
- 77-29-3. Chapter inapplicable to incompetent persons.
- 77-29-4. Escape of prisoner voids demand.
- 77-29-5. Interstate agreement on detainees — Enactment into law — Text of agreement.
- 77-29-6. Interstate agreement — "Appropriate court" defined.
- 77-29-7. Interstate agreement — Duty of state agencies and political subdivisions to co-operate.

- 77-29-8. Interstate agreements — Application of habitual criminal law.
 77-29-9. Interstate agreement — Escape of prisoner while in temporary custody
 77-29-10. Interstate agreement — Duty of warden.
 77-29-11. Interstate agreement — Attorney general as administrator and information agent.

77-29-1. Prisoner's demand for disposition of pending charge — Duties of custodial officer — Continuance may be granted — Dismissal of charge for failure to bring to trial. (1) Whenever a prisoner is serving a term of imprisonment in the state prison, jail or other penal or correctional institution of this state, and there is pending against the prisoner in this state any untried indictment or information, and the prisoner shall deliver to the warden, sheriff or custodial officer in authority, or any appropriate agent of the same, a written demand specifying the nature of the charge and the court wherein it is pending and requesting disposition of the pending charge, he shall be entitled to have the charge brought to trial within 120 days of the date of delivery of written notice.

(2) Any warden, sheriff or custodial officer, upon receipt of the demand described in subsection (1), shall immediately cause the demand to be forwarded by personal delivery or certified mail, return receipt requested, to the appropriate prosecuting attorney and court clerk. The warden, sheriff or custodial officer shall, upon request of the prosecuting attorney so notified, provide the attorney with such information concerning the term of commitment of the demanding prisoner as shall be requested.

(3) After written demand is delivered as required in subsection (1), the prosecuting attorney or the defendant or his counsel, for good cause shown in open court, with the prisoner or his counsel being present, may be granted any reasonable continuance.

(4) In the event the charge is not brought to trial within 120 days, or within such continuance as has been granted, and defendant or his counsel moves to dismiss the action, the court shall review the proceeding. If the court finds that the failure of the prosecuting attorney to have the matter heard within the time required is not supported by good cause, whether a previous motion for continuance was made or not, the court shall order the matter dismissed with prejudice.

History: C. 1953, 77-29-1, enacted by L. 1980, ch. 15, § 2.

Cross-References.

Right to speedy trial, Const. Art. I, § 12; 77-1-6.

Collateral References.

Criminal Law ⇌ 573-576.
 22A CJS Criminal Law §§ 466-479.
 21A AmJur 2d 303-342, Criminal Law §§ 849-875.

DECISIONS UNDER FORMER LAW

Commencement of ninety-day period.

Ninety-day period for prosecution under former 77-65-1 commenced on the day defendant notified county attorney of his request for final disposition of case or cases pending against him; and the filing of a complaint, information or indictment did not

affect the commencement of the period. State v. Moore (1974) 521 P 2d 556.

Motion to dismiss charges against defendant who was brought to trial 92 days after warden received notice of his request for final disposition of pending charges was properly denied since computation of time period commenced from date that notice was

delivered to county attorney and appropriate court. *State v. Taylor* (1975) 538 P 2d 310.

Delays caused by prisoner.

Where statute provided that prisoner be brought to trial within ninety days of his request for disposition of pending charges, the ninety-day disposition period was to be extended by the amount of time during which defendant himself created delay. *State v. Velasquez* (1982) 641 P 2d 115.

Forfeiture.

Defendant did not forfeit his right to have charges against him dismissed by remaining silent and failing to request an earlier setting when trial court set date for trial beyond ninety-day period required under former 77-65-1; burden of complying with statute rested on prosecutor. *State v. Wilson* (1969) 22 U 2d 361, 453 P 2d 158, distinguished in 25 U 2d 117, 477 P 2d 147.

Good cause for continuance.

Where defendant's trial date was originally set for time within ninety-day period provided for under former 77-65-1 but, to accommodate defendant's counsel, was postponed until five days beyond the statutory period, the order fixing the trial date was within the authority of the court since good cause for a continuance had been shown. *State v. Bonny* (1970) 25 U 2d 117, 477 P 2d 147.

Trial court was within its discretion in granting continuance for trial on date 91 days after defendant had submitted written request for disposition of pending criminal case where subpoenas had not been issued soon enough to proceed with trial on original date, despite defendant's counsel suggesting trial date within ninety-day period. *Danks v. Turner* (1972) 28 U 2d 277, 501 P 2d 631.

Good cause for failure.

Defendant, who was charged at a time he had other cases pending against him and in one of those cases requested and received psychiatric examination and who was

appointed various counsel because of necessity and at his own request, was not denied right to speedy trial. *State v. Carlsen* (1970) 25 U 2d 136, 478 P 2d 326.

Premature request.

Defendant's request for final disposition was premature where proceedings had advanced only to point of filing of complaint against him, since person accused of felony must plead to and be tried under information or indictment. *State v. Belcher* (1970) 25 U 2d 37, 475 P 2d 60, distinguished in 30 U 2d 435, 519 P 2d 244.

Defendant, who was not finally tried within ninety days from date of request made pursuant to former 77-65-1, was not entitled to exoneration because his request was premature since only complaint for felony charge had been filed, good cause was shown for granting continuance, and insanity defense had precluded earlier trial. *State v. Belcher* (1970) 25 U 2d 37, 475 P 2d 60.

Parolee who, after being arrested on complaint, filed petition requesting final disposition of case within ninety days was denied relief under former 77-65-1 where trial was held more than ninety days after filing date of petition but within ninety days of filing of information. *State v. Clark* (1972) 28 U 2d 272, 501 P 2d 274, distinguished in 30 U 2d 435, 519 P 2d 244.

Former 77-65-1 did not apply to unfilled charges and defendant was not entitled to assert ninety-day limitation upon prosecution for any crime discovered or undiscovered which he might have committed. *State v. Farnsworth* (1974) 30 U 2d 435, 519 P 2d 244.

Retention of request by warden.

Any attempt by the warden to retain, beyond a reasonable time, a prisoner's request for final disposition of pending charges, his failure to complete the required certificate, or any attempt to misdirect the request and certificate, would violate prisoner's right to a speedy trial and provide a basis for judicial relief. *State v. Taylor* (1975) 538 P 2d 310.

77-29-2. Duty of custodial officer to inform prisoner of untried indictments or informations. The warden, sheriff or custodial officer shall promptly inform a prisoner in writing of the source and contents of any untried indictments or informations against that prisoner concerning which he has knowledge and of that prisoner's right to make a request for final disposition thereof.

History: C. 1953, 77-29-2, enacted by L. 1980, ch. 15, § 2.

77-29-3. Chapter inapplicable to incompetent persons. The provisions of this chapter shall not apply to any person while adjudged to be incompetent to proceed under chapter 15.

History: C. 1953, 77-29-3, enacted by L. 1980, ch. 15, § 2.

77-29-4. Escape of prisoner voids demand. Escape from custody by a prisoner after delivery of the written demand referred to in section 77-29-1(1) shall void the request.

History: C. 1953, 77-29-4, enacted by L. 1980, ch. 15, § 2.

77-29-5. Interstate agreement on detainees — Enactment into law — Text of agreement. The interstate agreement on detainees is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I

The party states find that charges outstanding against a prisoner, detainees based on untried indictments, informations or complaints, and difficulties in securing speedy trial 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 detainees based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainees, when emanating from another jurisdiction, cannot properly be had in the absence of co-operative procedures. It is the further purpose of this agreement to provide such co-operative procedures.

ARTICLE II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; 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 dispositions 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 officer's 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 for 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 detainees 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 official 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 a 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 a 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 30 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 one hundred twenty 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 the 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 for 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 of 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 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.

History: C. 1953, 77-29-5, enacted by L. 1980, ch. 15, § 2.

Compliance standard.

The standard to which administration of the Interstate Agreement on Detainers should be held is substantial compliance with the terms of the agreement and fundamental fairness in the overall result. *Hearn v. State* (1982) 642 P 2d 757.

Sentence in receiving state interrupted for return to sending state.

There was substantial compliance with the terms of this Agreement and no violation of fundamental fairness in the fact that prisoner's service of sentence in the receiving

state was interrupted for his return to the sending state and is to be resumed, pursuant to detainer from the receiving state, after he completes service of his sentence in the sending state and an intervening federal sentence. *Hearn v. State* (1982) 642 P 2d 757.

Collateral References.

Validity, construction, and application of Interstate Agreement on Detainers, 98 ALR 3d 160.

Law Reviews.

Note, The State University's Place Among Overlapping Police Jurisdictions During a Student Mass Disturbance, 1971 Utah L. Rev. 474.

77-29-6. Interstate agreement — "Appropriate court" defined. The phrase "appropriate court" as used in the agreement on detainers shall,

with reference to the courts of this state, mean any court with criminal jurisdiction in the matter involved.

History: C. 1953, 77-29-6, enacted by L. 1980, ch. 15, § 2.

77-29-7. Interstate agreement — Duty of state agencies and political subdivisions to co-operate. All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainees and to co-operate with one another and with other party states in enforcing the agreement and effectuating its purpose.

History: C. 1953, 77-29-7, enacted by L. 1980, ch. 15, § 2.

77-29-8. Interstate agreements — Application of habitual criminal law. Nothing in the agreement on detainees shall be construed to require the application of the habitual criminal law of this state to any person as a result of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement.

History: C. 1953, 77-29-8, enacted by L. **Cross-References.**
1980, ch. 15, § 2. Habitual criminals, 76-8-1001, 76-8-1002.

77-29-9. Interstate agreement — Escape of prisoner while in temporary custody. Escape or attempt to escape from custody, whether within or without this state, while in the temporary custody of an authority of another state acting pursuant to the agreement on detainees shall constitute an offense against this state. Such escape or attempt to escape shall constitute an offense to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been released to temporary custody, and shall be punishable in the same manner as an escape or attempt to escape from said institution.

History: C. 1953, 77-29-9, enacted by L. 1980, ch. 15, § 2.

77-29-10. Interstate agreement — Duty of warden. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to deliver any inmate thereof whenever so required by the operation of the agreement on detainees.

History: C. 1953, 77-29-10, enacted by L. 1980, ch. 15, § 2.

77-29-11. Interstate agreement — Attorney general as administrator and information agent. The attorney general is hereby designated as the officer who shall be the central administrator of and information agent for the agreement on detainees as provided in Article VII of the agreement.

History: C. 1953, 77-29-11, enacted by L. 1980, ch. 15, § 2.

Exhibit D - Extradition.
UTAH CODE ANN. §§77-30-1 et seq.(1953)

CHAPTER 30**EXTRADITION****Section**

- 77-30-1. Definitions.
- 77-30-2. Duty of governor to deliver person charged with crime upon demand by other state.
- 77-30-3. Form of demand — What documents presented must show.
- 77-30-4. Governor may investigate demand.
- 77-30-5. Extradition for prosecution before conclusion of trial or term in other state — Return of person involuntarily leaving demanding state.
- 77-30-6. Extradition for crime committed in another state by person while in this state.
- 77-30-7. Governor's warrant of arrest — Recitals.
- 77-30-8. Execution of warrant of arrest.
- 77-30-9. Authority of officers under warrant of arrest.
- 77-30-10. Time to apply for habeas corpus allowed.
- 77-30-11. Penalty for disobedience of preceding section.
- 77-30-12. Officers entitled to use local jails.
- 77-30-13. Fugitives from justice — Warrant of arrest.
- 77-30-14. Arrest without warrant.
- 77-30-15. Commitment pending arrest under warrant of governor.
- 77-30-16. Bail, except in capital cases.
- 77-30-17. Procedure when no arrest made under warrant of governor.
- 77-30-18. Forfeiture of bail.
- 77-30-19. Procedure if prosecution pending in this state.
- 77-30-20. Governor not to inquire into guilt or innocence.
- 77-30-21. Governor's warrant of arrest recalled or another issued.
- 77-30-22. Fugitives from this state — Issuance of governor's warrant.
- 77-30-23. Fugitives from this state — Applications for requisition for return.
- 77-30-24. Payment of expenses.
- 77-30-25. Person brought into state on extradition exempt from civil process — Waiver of extradition proceedings — Non-waiver by this state.
- 77-30-26. Prosecution not limited to crime specified in requisition.
- 77-30-27. Uniformity of interpretation.
- 77-30-28. Citation — Uniform Criminal Extradition Act.

77-30-1. Definitions. Where appearing in this act, the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority," includes the governor and any person performing the functions of governor in a state other than this state. The term, "state" referring to a state other than this state, includes any other state or territory organized or unorganized, of the United States of America.

History: C. 1953, 77-30-1, enacted by L. 1980, ch. 15, § 2.

35 CJS Extradition § 3.

31 AmJur 2d 921 et seq., Extradition § 1 et seq.

Cross-References.

Duty of governor respecting extradition, 67-1-1(9).

Constitutionality, construction, and application of statute authorizing extradition of one who commits an act within the state or a third state resulting in a crime in the demanding state, 151 ALR 239.

Collateral References.

Extradition ⇌ 22.

DECISIONS UNDER FORMER LAW**Complaint.**

In extradition proceedings under former statute, complaint made "in the probate

court of the county of Bonneville, state of Idaho," before the "probate judge," and certified by judge under seal of court, showed

venue sufficiently on its face. *Bell v. Corless* (1921) 57 U 604, 196 P 568.

In extradition proceedings under former statute, complaint which stated all of essential facts constituting offense, and was sworn to in positive terms, was sufficient. *Bell v. Corless* (1921) 57 U 604, 196 P 568.

Effect of Act of Congress.

The Act of Congress regarding fugitives from justice was in force in this state, and such fugitive could be arrested even before demand made. *Ex parte Romanes* (18—) 1 U 23.

Illegal means, effect.

The question of whether the state's power to try a person accused of a crime is impaired by the fact that he was brought within the territorial jurisdiction by illegal means was within the province of determination by state courts and presented no question for review by the United States Supreme Court. *Washington v. Renouf* (1956) 5 U 2d 185, 299 P 2d 620.

Where there was a detention of an accused under legal process, his wrong against the state holding him was not to be condoned because of violence or wrong committed against his person by individuals who brought him into the jurisdiction, even though such individuals might be subject to civil or criminal liability for their unlawful

acts. *Washington v. Renouf* (1956) 5 U 2d 185, 299 P 2d 620.

Requisition.

In extradition proceedings under former statute, authentication of papers attached or annexed to requisition was sufficient, although governor did not certify to genuineness of annexed papers, where provisions of federal statutes were substantially complied with. *Bell v. Corless* (1921) 57 U 604, 196 P 568.

In habeas corpus proceedings by fugitive from another state, affidavits for requisition which contained positive and direct statements of fact and charged in direct terms the commission of crime, were sufficient. *Harris v. Burbidge* (1921) 58 U 392, 199 P 663.

Where one was accused of being fugitive from justice from state demanding his extradition, it was held in habeas corpus proceeding that court did not err in denying petitioner right to introduce evidence tending to show that he was not fugitive from justice and that affidavits in support of requisition were false, since surrendering state had no legal right to take evidence or attempt to inquire into facts constituting crime by going behind positive statements of requisition affidavits nor to question sufficiency of such papers in any way when it appeared upon their face that they met requirements of statute. *Harris v. Burbidge* (1921) 58 U 392, 199 P 663.

77-30-2. Duty of governor to deliver person charged with crime upon demand by other state. Subject to the provisions of this act, the provisions of the Constitution of the United States controlling, and any and all Acts of Congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime who has fled from justice and is found in this state.

History: C. 1953, 77-30-2, enacted by L. 1980, ch. 15, § 2.

Collateral References.

Extradition ⇐ 24.
35 CJS Extradition § 4.

Appeal from order releasing one in extradition proceedings, 5 ALR 1156.

Bar of limitations as proper subject of investigation in extradition proceedings or in habeas corpus proceedings for release of one sought to be extradited, 77 ALR 902.

Desertion or failure to support wife or child, one charged with as fugitive from justice and subject to extradition, 54 ALR 281.

Determination in extradition proceedings, or on habeas corpus in such proceedings, whether a crime is charged, 81 ALR 552, 40 ALR 2d 1151.

Escaped or paroled convict, or one at liberty on bail, extradition of, 78 ALR 419.

Fugitive in custody, extradition of, under charge in asylum state, 42 ALR 585.

Identification: necessity and sufficiency of identification of accused as person charged, to warrant extradition, 93 ALR 2d 912.

Juveniles, extradition of, 73 ALR 3d 700.

Mission or motive of defendant in going to asylum state as affecting right to extradite him, 13 ALR 415.

Motive or ulterior purpose of officials demanding or granting extradition as subject of inquiry, 94 ALR 1493.

Sanity or insanity or pendency of lunacy proceedings as matters for consideration in extradition proceedings, 114 ALR 693.

77-30-3. Form of demand — What documents presented must show.

No demand for the extradition of a person charged with a crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under section 77-30-6, 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 the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon or by a copy of a judgment of conviction or of a sentence composed in execution, 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.

History: C. 1953, 77-30-3, enacted by L. 1980, ch. 15, § 2.

DECISIONS UNDER FORMER LAW

Affidavit requirement.

An affidavit is not required with the extradition papers when the charge is contained in an indictment found by the grand jury. *Ludahl v. Larson* (1978) 586 P 2d 439.

Authentication.

Authentication required was that of the governor of the demanding state; requirement was satisfied by first sentence of request for extradition signed by the demanding state's governor declaring that the annexed papers had been authenticated in accordance with laws of that state. *Bir-*

mingham v. Larson (1971) 26 U 2d 414, 490 P 2d 893.

Operation and effect.

Where a demand of the state of Oregon for extradition was written, alleged the presence of the plaintiff in the state of Oregon at the time of the alleged crime and that he fled from the state thereafter, and had attached a number of documents which the governor certified to be authentic and true, the demand for extradition complied with the requirements of former section. *Little v. Beckstead* (1961) 11 U 2d 270, 358 P 2d 93.

77-30-4. Governor may investigate demand. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with a crime, the governor may call upon the attorney general or any prosecuting officer in this state 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.

History: C. 1953, 77-30-4, enacted by L. 31 AmJur 2d 945 et seq., Extradition § 30 et seq.

Collateral References.

Extradition ⇔ 34, 39.
35 CJS Extradition § 13.

Probable cause. necessity that demanding state show probable cause to arrest fugitive in extradition proceedings, 90 ALR 3d 1085.

77-30-5. Extradition for prosecution before conclusion of trial or term in other state — Return of person involuntarily leaving demanding state. When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state 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 state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in section 77-30-23 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

History: C. 1953, 77-30-5, enacted by L. 35 CJS Extradition § 9.
1980, ch. 15, § 2.

Collateral References.

Extradition ⇔ 29.

Surrender of convict to authorities of other jurisdiction as precluding punishment or further punishment under original conviction, 147 ALR 941.

77-30-6. Extradition for crime committed in another state by person while in this state. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state, in the manner provided in section 77-30-3, with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act 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.

History: C. 1953, 77-30-6, enacted by L. 35 CJS Extradition § 9.
1980, ch. 15, § 2.

Collateral References.

Extradition ⇔ 29
35 CJS Extradition § 9

77-30-7. Governor's warrant of arrest — Recitals. If the governor decides that the demand should be complied with he shall sign a warrant of arrest, which shall be sealed with the state seal, directed 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.

History: C. 1953, 77-30-7, enacted by L. 1980, ch. 15, § 2.

Cross-References.

Warrant of arrest, 77-35-6.

Collateral References.

Extradition ⇌ 36.

35 CJS Extradition § 16.

31 AmJur 2d 966-969, Extradition §§ 60-63.

Sufficiency of recitals in rendition warrant as regards copy of indictment or affidavit, 89 ALR 595.

Sufficiency of statements in demand papers in extradition proceedings as allegation or proof of presence of accused in demanding state at time of commission of alleged crime or that accused is a fugitive, 135 ALR 973.

77-30-8. Execution of warrant of arrest. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state 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 act to the duly authorized agent of the demanding state.

History: C. 1953, 77-30-8, enacted by L. 1980, ch. 15, § 2.

Collateral References.

Extradition ⇌ 36.

35 CJS Extradition § 16.

77-30-9. Authority of officers under warrant of arrest. Every such peace officer or other person empowered to make the arrest shall have the same authority in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

History: C. 1953, 77-30-9, enacted by L. 1980, ch. 15, § 2.

Collateral References.

Extradition ⇌ 37.

35 CJS Extradition § 12.

77-30-10. Time to apply for habeas corpus allowed. 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 court of record in this state 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 of such court of record 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 the time and place of hearing thereon shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

History: C. 1953, 77-30-10, enacted by L. 1980, ch. 15, § 2.

Cross-References.

Courts of record enumerated, 78-1-2.

Habeas corpus, Const. Art. I, § 5; Art. VIII, §§ 4, 7; 78-2-2, 78-3-4; Rules of Civil Procedure, Rule 65B(f).

Right to counsel, Const. Art. I, § 12; 77-1-6, 77-35-7.

Collateral References.

Extradition ⇌ 39.

35 CJS Extradition § 17.

31 AmJur 2d 970-975, Extradition §§ 64-67.

Determination, in extradition proceedings, or on habeas corpus in such proceedings, whether a crime is charged, 40 ALR 2d 1151.

Discharge on habeas corpus of one held in extradition proceedings as precluding subsequent extradition proceedings, 33 ALR 3d 1443.

Right of one arrested on extradition warrant to delay to enable him to present evidence that he is not subject to extradition, 11 ALR 1410.

Right to prove absence from demanding state or alibi on habeas corpus in extradition proceedings, 61 ALR 715.

DECISIONS UNDER FORMER LAW

Appealable order.

An order denying motion for discovery in proceeding by defendant on extraordinary writ akin to habeas corpus to stay execution was not a final appealable order. Aldridge v. Beckstead (1964) 16 U 2d 136, 396 P 2d 870.

Burden of proof.

In extradition proceedings a prima facie case was made by the governor's rendition warrant and by showing that prisoner had the same name as that of the wanted man, and the burden was then upon the prisoner to offer convincing proof that he was not the person demanded. Mora v. Larson (1975) 540 P 2d 520.

Person resisting extradition has the burden to prove that he is not the person named in the rendition warrant, or that the information does not state a crime under the law of the demanding state, or that he was not in the demanding state when the alleged crime

was committed. Phillips v. Vance (1979) 594 P 2d 885.

Operation and effect.

The proper process for testing the legal sufficiency and validity of an arrest and detention in extradition proceedings was the habeas corpus proceeding and in such proceeding the plaintiff should have been allowed to test the validity of the extradition proceeding and challenge whether the statutory requirements have been met. Little v. Beckstead (1961) 11 U 2d 270, 358 P 2d 93.

Petitioner was entitled to release in habeas corpus proceedings prior to execution of extradition since the state of Utah did not produce any means of identifying him except his first and last name, and it was alleged that there were at least four other persons in Salt Lake area bearing the same first and last names. Madsen v. Larsen (1974) 527 P 2d 227.

77-30-11. Penalty for disobedience of 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, [77-30-10] shall be guilty of a misdemeanor and on conviction shall be fined not more than \$1,000 or be imprisoned in the county jail not more than six months, or both.

History: C. 1953, 77-30-11, enacted by L. 1980, ch. 15, § 2.

Collateral References.

Extradition ⇌ 39.

35 CJS Extradition § 17.

77-30-12. Officers entitled to use local jails. 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 must 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.

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 state with such a prisoner for the purpose of immediately returning 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 must 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 being chargeable with the expense of keeping; provided, such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

History: C. 1953, 77-30-12, enacted by L. 1980, ch. 15, § 2.

Collateral References.

Extradition ⇌ 37.
35 CJS Extradition § 12.

77-30-13. Fugitives from justice — Warrant of arrest. Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state, and, except in cases arising under section 77-30-6 that he has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state 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 section 77-30-6, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

History: C. 1953, 77-30-13, enacted by L. 1980, ch. 15, § 2.

35 CJS Extradition § 10.

31 AmJur 2d 931-933, Extradition §§ 14, 15.

Collateral References.

Extradition ⇌ 30.

One removed from demanding state or county as a fugitive from justice within contemplation of extradition laws, 85 ALR 118.

77-30-14. Arrest without warrant. The arrest of a person may be lawfully made also by any peace officer or a 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 must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section, [77-30-13] and thereafter his answer shall be heard as if he had been arrested on a warrant.

History: C 1953, 77-30-14, enacted by L. 1980, ch. 15, § 2.

77-30-15. Commitment pending arrest under warrant of governor. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged, and, except in cases arising under section 77-30-6 that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty days and 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 gives bail as provided in the next section or until he shall be legally discharged.

History: C. 1953, 77-30-15, enacted by L. 1980, ch. 15, § 2.

Collateral References.

Extradition ⇔ 39.
35 CJS Extradition § 17.

77-30-16. Bail, except in capital cases. 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 a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state.

History: C. 1953, 77-30-16, enacted by L. 1980, ch. 15, § 2.

Collateral References.

Extradition ⇔ 37.
35 CJS Extradition § 19.
31 AmJur 2d 942, Extradition § 27.

Cross-References.

Bail generally, Const Art I, §§ 8, 9; 77-20-1 et seq.

77-30-17. Procedure when no arrest made under warrant of governor. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty days, or a judge or magistrate may again take bail for his

appearance and surrender, as provided in section 77-30-16, but within a period not to exceed sixty days after the date of such new bond.

History: C. 1953, 77-30-17, enacted by L. 1980, ch. 15, § 2.

77-30-18. Forfeiture of bail. If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond the judge or magistrate by proper order shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

History: C. 1953, 77-30-18, enacted by L. 1980, ch. 15, § 2.

Collateral References.

Extradition ⇌ 37
35 CJS Extradition § 19.

77-30-19. Procedure if prosecution pending in this state. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending the governor, in his discretion, may either 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 state.

History: C. 1953, 77-30-19, enacted by L. 1980, ch. 15, § 2.

Collateral References.

Extradition ⇌ 31.
35 CJS Extradition § 11.
31 AmJur 2d 935, Extradition § 18.

77-30-20. Governor not to inquire into guilt or innocence. The guilt or innocence of the accused as to the crime of which he is charged in another state 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.

History: C. 1953, 77-30-20, enacted by L. 1980, ch. 15, § 2.

Collateral References.

Extradition ⇌ 35.
35 CJS Extradition § 15.
31 AmJur 2d 956, 957, Extradition §§ 47, 48.

Determination in extradition proceedings, or on habeas corpus in such proceedings, whether a crime is charged, 40 ALR 2d 1151.

Necessity and sufficiency of identification of accused as the person charged, to warrant extradition, 93 ALR 2d 912.

77-30-21. Governor's warrant of arrest recalled or another issued. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

History: C. 1953, 77-30-21, enacted by L. 1980, ch. 15, § 2.

Collateral References.

Extradition ⇌ 36.
35 CJS Extradition § 16.
31 AmJur 2d 969, Extradition § 63.

77-30-22. Fugitives from this state — Issuance of governor's warrant. Whenever the governor of this state shall demand a person charged with a crime or with escaping from confinement or breaking the terms of his bail, probation, or parole in this state from the executive authority of any other state or from the chief justice or an associate justice of the superior 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 state 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 in this state in which the offense was committed.

History: C. 1953, 77-30-22, enacted by L. 1980, ch. 15, § 2.

Collateral References.

Extradition ⇌ 23-26, 36.

35 CJS Extradition §§ 4-6, 16.

77-30-23. Fugitives from this state — Applications for requisition for return. (1) When the return to this state of a person charged with a crime in this state is required, the prosecuting attorney 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 said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county from which 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, the state in which he is believed to be, including the location of the person therein at the time application is made.

(3) 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 or magistrate stating the offense with which the accused is charged, or of the judgment or conviction, or of the sentence. The prosecuting officer, parole board, 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 state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

History: C. 1953, 77-30-23, enacted by L. 1980, ch. 15, § 2.

Collateral References.

Extradition ⇌ 34.
35 CJS Extradition § 13.
31 AmJur 2d 945-947, Extradition §§ 31-33.

77-30-24. Payment of expenses. When the punishment of the crime shall be the confinement of the criminal in the prison, the expenses shall be paid out of the state treasury on the certificate of the governor and warrant of the auditor, and in all other cases they shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made, not exceeding ten cents a mile for all necessary travel in returning such prisoner.

History: C. 1953, 77-30-24, enacted by L. 1980, ch. 15, § 2.

Collateral References.

Extradition ⇌ 40.
35 CJS Extradition § 23.
31 AmJur 2d 940, Extradition § 24.

77-30-25. Person brought into state on extradition exempt from civil process — Waiver of extradition proceedings — Non-waiver by this state. (1) A person brought into this state 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 proceedings to answer which he is being or has been returned until he has been convicted in the criminal proceedings, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

(2) Any person arrested in this state 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 sections 77-30-7 and 77-30-8, and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state; provided, before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such 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 section 77-30-10.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding

state and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, or shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

(3) Nothing in this act shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for a crime committed within this state, 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 state, or shall any proceedings had under this act which result in or fail to result in extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

History: C. 1953, 77-30-25, enacted by L.
1980, ch 15, § 2.

35 CJS Extradition § 21.
31 AmJur 2d 980, 981, Extradition §§ 74, 75

Collateral References.

Extradition ⇔ 41

Immunity of extradited person from service of process, 20 ALR 2d 172.

77-30-26. Prosecution not limited to crime specified in requisition.

After a person has been brought back to this state by or after waiver of extradition proceedings he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

History: C. 1953, 77-30-26, enacted by L.
1980, ch 15, § 2.

Right to try one for an offense other than that named in extradition proceedings, 21 ALR 1405.

Collateral References.

Extradition ⇔ 41
35 CJS Extradition § 21.
31 AmJur 2d 978, Extradition § 72.

Surrender of fugitive as waiver by asylum state of right to prosecute him for offense previously committed, 93 ALR 931

77-30-27. Uniformity of interpretation. The provisions of this act shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

History: C. 1953, 77-30-27, enacted by L.
1980, ch 15, § 2.

77-30-28. Citation — Uniform Criminal Extradition Act. This act may be cited as the Uniform Criminal Extradition Act.

History: C. 1953, 77-30-28, enacted by L.
1980, ch 15, § 2.

CHAPTER 31

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

Section
77-31-1 Purposes.

77-30-2. Duty of governor to deliver person charged, etc.

Juvenile.

Utah juvenile charged as an adult in Wyoming with two counts of first degree sexual assault and battery with felonious intent, aggravated robbery and burglary was not entitled to a hearing in Utah's juvenile court for certification to be tried as an adult before

being extradited to Wyoming. *Burnham v. Hayward* (1983) 663 P 2d 65.

Law Reviews.

Interstate Extradition: Should the Asylum State Governor Have Unbridled Discretion?, 1980 B.Y.U. L. Rev. 376.

77-30-3. Form of demand — What documents presented must show.

Affidavit based on hearsay.

Extradition warrant can be issued on the basis of an affidavit based on hearsay. *Langley v. Hayward* (1982) 656 P 2d 1020.

77-30-10. Time to apply for habeas corpus allowed.

Burden of proof.

Habeas corpus petitioner who denies that he is a fugitive from justice has the burden of proving that fact by clear and convincing evidence. *Langley v. Hayward* (1982) 656 P 2d 1020.

State has the burden of proving that the person arrested is the person named in the extradition papers, and a prima facie case is established where the state shows that the arrested person has or is known by the same

name as that appearing on the papers; where state has made a prima facie case, the habeas corpus petitioner has the burden of going forward with affirmative evidence that he is not the person named in the papers, and where he does so, the state is required to corroborate the petitioner's identity with the person named in the extradition papers, and where the state so corroborates, the court must weigh the evidence and make a finding on the issue of identity. *Langley v. Hayward* (1982) 656 P 2d 1020.

77-30-23. Fugitives from this state — Applications for requisition for return. (1) When the return to this state of a person charged with a crime in this state is required, the prosecuting attorney 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 said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county from which 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, the state in which he is believed to be, including the location of the person therein at the time application is made.

(3) 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 or magistrate stating the offense with which the accused is charged, or of the judgment or conviction, or of the sentence.

The prosecuting officer, parole board, 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 governor to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

History: C. 1953, 77-30-23, enacted by L. 1980, ch. 15, § 2; L. 1984, ch. 67, § 64.

Compiler's Notes.

The 1984 amendment substituted "governor" for "secretary of state" in the second sentence of the second paragraph of subsec. (3).

CHAPTER 31

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

77-31-1. Purposes.

Law Reviews.

Nordgren v. Mitchell: Indigent Paternity Defendants' Right to Counsel, 1982 Utah L. Rev. 933.

CHAPTER 32

COUNSEL FOR INDIGENT DEFENDANTS

Section

77-32-1. Minimum standards provided by county for defense of indigent defendants.

77-32-2. Assignment of counsel on request of defendant or order of court.

77-32-1. Minimum standards provided by county for defense of indigent defendants. The following are minimum standards to be provided by each county, city and town for the defense of indigent persons in criminal cases in the courts and various administrative bodies of the state:

- (1) Provide counsel for every indigent person who faces the substantial probability of the deprivation of his liberty;
- (2) Afford timely representation by competent legal counsel;
- (3) Provide the investigatory and other facilities necessary for a complete defense;
- (4) Assure undivided loyalty of defense counsel to the client; and
- (5) Include the taking of a first appeal of right and the prosecuting of other remedies before or after a conviction, considered by the defending counsel to be in the interest of justice except for other and subsequent discretionary appeals or discretionary writ proceedings.

History: C. 1953, 77-32-1, enacted by L. 1980, ch. 15, § 2; L. 1981, ch. 67, § 1; 1983, ch. 52, § 1.

Compiler's Notes.

The 1983 amendment substituted "substantial probability" for "possibility" in subsec. (1); and deleted "or other serious criminal sanction" at the end of subsec. (1).