

CHAPTER 629

EXTRADITION, ARREST, AND BAIL

EXTRADITION

NOTE: Sections 629.01 to 629.29 may be cited as the uniform criminal extradition act. The act as revised was released by the national conference of commissioners on uniform state laws in 1936; and adopted in Minnesota by L. 1939, c. 240. Mason's Minnesota Statutes, sections 10541 to 10547, were repealed. The act is in force in the following 32 states: Alabama, Arizona, Arkansas, California, Delaware, Florida, Hawaii, Idaho, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Dakota, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

629.01 DEFINITIONS.

On the face of the documents accompanying the requisition warrant issued by the governor of Georgia to the governor of this state for a fugitive from justice, it appears that there was a substantial compliance with the prerequisites prescribed by the Georgia code for the issuance of the warrant. However that matter was for the governor of that state to determine, and his determination is not for review by the courts of this state. It is enough that the indictment accompanying the requisition shows in general terms the commission of a crime in the demanding state by the fugitive; it need not be sufficient as a criminal pleading. On habeas corpus neither the good faith of the prosecution nor the guilt or innocence of the fugitive is open to inquiry. *State ex rel v Wall*, 178 M 368, 227 NW 176.

Fugitive from justice. 2 MLR 303.

Interstate crime control, fresh pursuit, extradition, rendition of witnesses, interstate parole and probation. 31 MLR 240.

629.02 DUTIES OF GOVERNOR IN EXTRADITION MATTERS.

A prisoner who has been removed from the demanding state by federal authorities is nevertheless a fugitive from justice in an asylum state and must be delivered to the demanding state upon proper extradition process. The discharge by writ of habeas corpus of a prisoner held upon an extradition warrant for the reason that the courts of one state hold that he is not a fugitive from justice is not *res judicata* in habeas corpus proceedings in another state where the same issue is raised. *State ex rel v Wall*, 187 M 246, 244 NW 811.

An inmate who escapes from the Sauk Centre Girls School is not subject to extradition. OAG July 14, 1943 (193-B-15).

Extradition is for the sole purpose of punishment. It cannot be used to compel support of children. OAG Nov. 1, 1944 (193-B-1).

Extradition; persons in custody or on parole in asylum state; governor's power to waive jurisdiction. 13 MLR 263.

Extradition; habeas corpus; evidence required to show that accused was not a fugitive from justice from demanding state. 22 MLR 431.

629.03 DEMAND IN WRITING.

A demand for extradition complies with the federal statute when it clearly shows that a criminal charge is pending in the demanding state, even though the papers

are insufficient as a criminal pleading under the laws of the state. *State ex rel v Wall*, 181 M 456, 232 NW 788.

"Complaint" sworn to on information and belief attached to requisition papers is sufficient "indictment" or "affidavit" to authorize the issuance of extradition papers by the governor of the asylum state under the provisions of 18 USCA, s. 662; as likewise under the same section the governor's issuance of extradition warrant raises a presumption which controls, until rebutted, that the named person is a "fugitive from justice" and hence subject to extradition. *State ex rel v Moeller*, 191 M 193, 253 NW 668.

A man who removes to Florida and refuses to return or support his child is guilty of child desertion, a continuing offense. The desertion was committed in Florida and intentionally resulted in a crime in the state of Minnesota, and is an indictable offense from Florida. OAG April 14, 1947 (193-B-1).

629.06 MAY EXTRADITE PERSONS CAUSING CRIME.

Discussion of effect of section 629.06 and résumé of cases in other states relating to extradition of one who abandons minor children, and particularly when the accused was not in the demanding state at the time of commission of the crime. 1944 OAG 80, Aug. 22, 1944 (193-B-1).

A person living in California prior to the date California adopted the uniform extradition act, or a person living in the state of Washington which has not adopted the act, who deserts a child in Minnesota, is not a fugitive from justice unless in Minnesota on or about the date of the commission of the crime. OAG Nov. 30, 1944 (193-A-4); OAG May 3, 1945 (193-B-1); OAG May 15, 1945 (193-B-1).

The state of Washington not having adopted the uniform criminal extradition act, a man who had committed no crime when he left Minnesota, and who had resided in Washington for a year cannot be extradited for non-support of family in Minnesota. OAG May 18, 1945 (193-B-1).

Form of complaint and application for requisition where the offense is a misdemeanor, and where the asylum state has not enacted the uniform act, and where the fugitive has not been in the demanding state since the crime was committed. OAG July 16, 1947 (193-B-1).

Prior to the adoption of the federal constitution, fugitives from justice were surrendered between the states conformably to what were deemed to be controlling principles of comity. Article IV of the federal constitution embraces the subject of rendition of fugitives from justice between the states and confers authority upon the congress to deal with the subject. In construing an act of congress, the supreme court of the United States will not presume that because its provisions are not coterminous with the power granted by congress, it was so framed for the purpose of leaving the subject, so far as unprovided for, beyond the operation of any legal authority whatever, state or national. *Innes v Tobin*, 240 US 127.

The federal constitution provides that a person charged in any state with crime "who shall flee from justice and be found in another state" shall, on demand of executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime. United States Constitution, Article 4, Section 2.

The federal statute implementing the federal constitutional provision provides in effect that wherever the executive authority of the state demands any person, as a fugitive from justice, of the executive authority of any state to which such person has fled, and produces an authenticated copy of an indictment found against such persons, it shall be the duty of the executive authority of the asylum state to cause such person to be arrested, secured, and delivered to the agent of the demanding state when he shall appear. 18 USCA, Section 662.

May a state by statute authorize the extradition of one having merely a constructive presence in the demanding state? 32 Am. L. Rep. Anno. 1167; 51 Am. L. Rep. Anno. 797; 54 Am. L. Rep. Anno. 281; 61 Am. L. Rep. Anno. 715.

One whose extradition to another state is sought is not entitled to discharge on habeas corpus on the ground that it has been shown that he is not a fugitive

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from justice, where he is not being proceeded against as such, but on the ground that, being in one state, he has committed an offense in another. *Cassis v Fair*, 126 W. Va. 557, 29 SE(2d) 245, 151 Am. L. Rep. Anno. 233.

629.13 WHO MAY BE APPREHENDED.

Fugitive cannot be extradited in order to force him to support his children but may be extradited to punish him for the crime of non-support. OAG Nov. 1, 1944 (840a-1).

In habeas proceedings in an extradition case evidence is required to show that the accused was not a fugitive from justice from the demanding state. 22 MLR 431.

629.16 MAY BE ADMITTED TO BAIL.

Bail pending proceeding in habeas corpus for discharge of person held under extradition warrant. 10 MLR 623.

629.19 MAY EITHER HOLD OR SURRENDER PRISONER.

Where a fugitive is subject to criminal charge in a state in which he has taken asylum, he is, if delivered to the state from which he is a fugitive, handed over, not by virtue of positive requirement of federal constitution, but as a matter of comity between the states. *Commonwealth v Asbe*, 141 Pa. Super. 119; 173 Atlantic 715.

629.22 WARRANT FOR PAROLEES OR PROBATIONERS.

Paroled convict, leaving state upon express direction of parole board, not a fugitive from justice upon revocation of parole. 11 MLR 77.

Paroled convict, leaving state upon express direction of parole board, is fugitive from justice upon revocation of parole. 11 MLR 376.

629.23 PROSECUTING ATTORNEY TO MAKE WRITTEN APPLICATION.

If a sheriff, against the advice of the county attorney, travels to another state and induces an accused person to voluntarily return with him, he is entitled to his expenses incurred and such expenses if reasonable should be allowed by the county board. OAG Dec. 29, 1944 (390-c3).

Proper form of application to obtain return of a fugitive from an asylum state. OAG Aug. 12, 1946 (121-B-7).

629.24 MAY NOT BE SERVED WITH CIVIL PROCESS.

Immunity from civil process to one attending court in extradition proceedings to answer a criminal charge. 6 MLR 410.

629.25 MAY BE TRIED FOR OTHER CRIMES.

A person brought into the state in a manner in violation of his legal rights is not immune from prosecution for a criminal offense. *State v Chandler*, 158 M 447, 197 NW 847.

629.27 GOVERNOR MAY APPOINT AGENT.

Immunity from service of process, non-resident officer engaged in extradition proceedings. 16 MLR 599.

ARRESTS

629.30 ARRESTS; BY WHOM MADE; AIDING OFFICER.

If a plant for the manufacture of war material is operated by the federal government, an officer may not enter to serve a warrant issued by a justice of the peace for arrest for a misdemeanor. OAG July 6, 1945 (602-A-2).

629.31 WHEN MADE.

In prosecution of an officer for wilful neglect of duty in failing to arrest proprietor of a disorderly house, it was not prejudicial error for the court to refuse defendant's request to read sections 629.31 to 629.34, pertaining to an officer's power of arrest, because those sections covered situations other than that presented by the evidence. State v Grunewald, 211 M 74, 300 NW 206.

629.32 HOW MADE; RESTRAINT; SHOW WARRANT.

Amended by L. 1947 c. 316 s. 1.

Accused was convicted of the crime of murder in the first degree, and a new trial was denied by the trial court. There was a reversal on appeal, largely because of the lack of proper procedure in obtaining a confession. Methods approaching "third degree" criticized. Proper method of procedure outlined. State v Schabert, 218 M 1, 15 NW(2d) 585.

629.34 WITHOUT WARRANT, WHEN; BREAK DOOR, WHEN.

See, State v Grunewald, 211 M 74, 300 NW 206, noted under section 629.31.

It was not prejudicial error for the court to refuse defendant's request to read sections 629.31 and 629.34, because said sections were not entirely applicable, and the judge's general charge covered all that was needful. State v Grunewald, 211 M 76, 300 NW 206.

Officer's perception by sense of smell of commission of crime as justifying arrest and search without a warrant. 15 MLR 359.

Officer's perception through mechanical instruments of commission of a crime as justifying search and seizure and arrest without a warrant. 19 MLR 468.

629.36 ARREST BY BYSTANDER; MAGISTRATE MAY COMMAND ARREST, WHEN.

Fresh pursuit, extradition, rendition of witnesses, interstate parole and probation. 31 MLR 699.

629.37 PRIVATE PERSON MAY ARREST, WHEN.

The authority of a village officer to make an arrest outside the village is limited to powers of a private person who may arrest where he sees a crime committed. OAG March 5, 1947 (785-B).

629.39 PROCEEDINGS BY PRIVATE PERSON MAKING ARREST.

Interstate crime control. 31 MLR 699.

629.40 ARRESTS ANY PLACE IN STATE; WHEN ALLOWED.

The authority of a village officer to make arrest extends to the village limits; but he may make arrest outside of the village limits as a private person if he sees a crime committed. OAG March 5, 1947 (785-B).

WARRANTS; BAIL BONDS

629.42 PROCEEDINGS ON COMPLAINT; WARRANT.

Testimony taken by a committing magistrate under section 629.42 need not be reduced to writing or certified and returned to the clerk of the district court under the provisions of section 629.57. Mandamus to the court does not lie. The ruling in the instant case is without prejudice to the relator's right to petition the trial court for relief. State ex rel v District Court, 192 M 620, 257 NW 340.

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629.43 WARRANT EXECUTED, WHERE.

See, Uniform Fresh Pursuit Act, sections 626.65 to 626.70.

629.44 OFFENDER MAY GIVE RECOGNIZANCE, WHEN; DUTY OF MAGISTRATE.

Where a defendant in a criminal case, out on a recognizance bond, fails to appear as required, and judgment is taken against both his sureties and one surety makes full payment, that surety is entitled to contribution as against the other. The situation is to be distinguished from the rule applicable in an indemnification agreement; and it is not against public policy to permit contribution between his sureties. *Sansome v Samuelson*, 222 M 417, 24 NW(2d) 702.

Criminal bail bond; oral agreement for continuance, release of surety. 5 MLR 402.

Right to bail after indictment in capital cases. 11 MLR 553.

629.46 PROCEDURE IN CASE OF FELONY.

Information or indictments in felony cases. 8 MLR 379, 381.

629.51 WITNESSES KEPT SEPARATE; TESTIMONY, HOW TAKEN.

Where a deputy clerk of court substitutes for the regular court reporter her earnings for the service inures to her individually. OAG March 18, 1944 (129).

629.52 PRISONER DISCHARGED, WHEN; OFFENSES NOT BAILABLE.

Where the committing magistrate discharges the prisoner, the indictment, if any, is not annulled, nor is the right to prosecute for the offense lost. *United States v Fogel*, 22 F(2d) 823.

State law determines the practice in proceedings for holding the accused to answer and the sufficiency of bail bond in accusation in the federal court. *United States v Pleason*, 26 F(2d) 104.

Abandonment of prosecution as evidence of want of probable cause. 3 MLR 55.

629.53 BAIL; COMMITMENT.

A warrant of commitment is sufficient, if it clearly designates the offense of which the prisoner is accused, and shows that, upon examination before the committing justice, it had appeared that such offense had been committed, and that there was probable cause to believe the accused to be guilty thereof. *State ex rel v Hoolihan*, 104 M 63, 115 NW 1037.

Relator was in attendance upon the district court of the county in which a crime charged against him was alleged to have been committed, and in compliance with prior proceedings, in all things regular, by which he was held by a committing magistrate to await the action of the grand jury at that term of court; and while so in attendance at such court for the purpose stated, and before the grand jury had acted upon his case or been discharged, a second warrant was issued against him, by which he was charged with the same offense. He was arrested and taken before a magistrate, when the hearing was continued to a time stated in the future, on habeas corpus to secure relator's discharge from the second arrest, that it was irregular and unlawful, and that the court below rightfully discharged him therefrom. *State ex rel v Riley*, 109 M 437, 124 NW 13.

The evidence sustains the findings of the referee, which we have examined, approved and adopted, that the respondent, an attorney at law, was guilty of unprofessional conduct in attempting to appropriate to his own use property which he knew did not belong to his client, but which had been entrusted to respondent by the owners thereof to be deposited in lieu of a bail to secure the release of his client from custody pending trial, and which property respondent knew was to be

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returned to the owners when the purpose of bail had been served. In re Condon, 157 M 24, 195 NW 492.

A county attorney has no authority to file a written dismissal with the clerk of the district court without making an application to the court and without the court making an order stating reasons for the dismissal. See, State v Cooper, 147 M 272, 276, and State v Kiewel, 166 M 302.

Section 629.53 applies where the defendant does not appear for sentence. OAG Dec. 15, 1944 (605-A-3).

Disbarment of attorney for attempt to subject property of third person deposited in lieu of bail to payment of attorney's fees. 8 MLR 158.

Information and indictments. 8 MLR 379, 394.

Criminal recognizance bond; right of contribution between co-sureties. 31 MLR 382.

629.58 PROCEEDINGS ON DEFAULT.

Where the principal on a bail bond defaults, and a surety pays the amount of the bond, the federal government will continue to make every effort to compel the appearance of the principal, but the surety is not subrogated to the rights of the government. U. S. v. Soucy, 60 F. Supp. 500.

Remission of bail, life imprisonment of defendant in foreign state as an excuse. 7 MLR 54.

629.59 PENALTY OF RECOGNIZANCE REMITTED, WHEN.

On a petition for vacation of the forfeiture to bail and a refund of the cash deposited, the trial court properly vacated the forfeiture. Edwards v Hennepin County, 116 M 101, 133 NW 469.

Remission of bail; excuse for failure to appear. 7 MLR 54.

629.60 ACTION ON RECOGNIZANCE; NOT BARRED, WHEN.

An agreement between the county attorney and the attorney for the accused that the defendant need not appear until after his discharge from the army, entered into without the knowledge of the court or of the sureties on the bail bond, did not discharge the surety's obligation to produce the defendant on demand. State v Cooper, 147 M 272, 180 NW 99; State v Kiewel, 166 M 302, 207 NW 646.

629.63 SURRENDER OF PRINCIPAL; NOTICE TO SHERIFF.

Right of surety to recapture principal in another state. 10 MLR 197.