

BASIC CONCEPTS OF INTERSTATE EXTRADITION
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- I. Uniform Criminal Extradition Act History
 - a. K.S.A. § 22-2701, et seq.
 - i. Originally enacted as the Uniform Criminal Extradition Act in 1936
 - ii. Recodified in 1970
 - iii. Last updated by KS Legislature in 1977
 - iv. Some version has been adopted by 45 states, Puerto Rico, the U.S. Virgin Islands and Guam
 - b. All extradition power between the States emanates from Article IV, §2, clause 2 of the Constitution of the United States
 - i. A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime.
 - 1. Dunn v. Hindman, 18 Kan.App.2d 537, 855 P.2d 994 (1993)
 - ii. The Extradition Clause was intended to enable each state to bring offenders to trial as swiftly as possible in the state where the alleged offense was committed.
 - 1. Biddinger v. Commissioner of Police, 245 U.S. 128 (1917)
 - iii. The purpose of the Clause was to preclude any state from becoming a sanctuary for fugitives from justice of another state and thus 'balkanize' the administration of criminal justice among the several states.
 - 1. Michigan v. Dornan, 439 U.S. 282 (1978)
 - iv. The courts of an asylum state are bound by Art. IV, §2 . . . and, where adopted, by the Uniform Criminal Extradition Act
 - 1. Michigan v. Dornan, 439 U.S. 282 (1978)
 - 2. Federal counterpart is 18 U.S.C. § 3182

II. Duties of the Governor and the Prosecutor

a. K.S.A. § 22-2702

- i. Subject to the provisions of this article, 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.

b. K.S.A. § 22-2704 – Investigation

- i. 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 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
 1. When an extradition application is in order, the Governor has no discretion whether to issue the extradition warrant, unless:
 - a. The fugitive is held to answer on local charges, in addition to out of state charges under K.S.A. § 22-2719; or,
 - b. The fugitive committed a crime while physically present in the asylum state which resulted in a crime in the demanding state under K.S.A. § 22-2706.
 2. If a fugitive has unresolved local charges or a sentence of imprisonment, the Governor may:
 - a. Withhold extradition until either the local prosecution and/or prison sentence is complete; or,
 - b. Enter into an executive agreement with the demanding state to cede custody of the fugitive with the agreement the fugitive will be returned to the asylum state when the out of state matter is concluded.

- c. K.S.A. § 22-2703 – Form of Demand
 - i. Must be in writing
 - ii. All application documents for an extradition are available on the Kansas Attorney General’s website under “Prosecution Resources”
 - 1. <https://www.ag.ks.gov/public-safety/prosecutor-resources>
 - 2. These forms are routinely updated, so please use them. Older forms can be rejected by the asylum state.
 - iii. Must state the fugitive was in the demanding state at the time the crime was committed and fled therefrom or was on probation or parole, violated conditions and fled therefrom
 - 1. But See K.S.A. § 22-2706
 - a. This provision allows for extradition of a person who, while in the asylum state, caused a crime to be committed in the demanding state
 - b. In this situation, the Governor has discretion whether to issue an extradition warrant
 - c. This is a separate form, also available on the Kansas AG’s website

- d. K.S.A. § 22-2723 – Required Documents for all extraditions
 - i. Governor’s requisition demand
 - 1. This is prepared by the Governor’s Office. NOT prepared by the local prosecutor
 - 2. This is also not the Governor’s actual extradition warrant
 - a. They look similar, but do not mistake them for the actual Governor’s warrant
 - ii. Application for Requisition
 - 1. Prepared by the local prosecutor
 - 2. Is a sworn document
 - a. May be sworn before a judge or notary
 - 3. Also must have a probable cause finding signed by a judge
 - a. May be a magistrate or district court judge
 - 4. Must be executed in triplicate
 - iii. Identification
 - 1. There must be sufficient identification of the fugitive provided by the prosecutor
 - a. Also must be three copies
 - 2. Examples
 - a. Fingerprints certified by the KBI

- b. Fingerprints certified by the arresting law enforcement agency
- c. Photographs
 - i. Please note, if you use a photograph, it must be taken in Kansas and the photo must indicate it was taken in Kansas
 - ii. If you use a photo provided by the asylum state, you will need an accompanying affidavit from a person who can identify the fugitive
- d. Photo affidavit
 - i. Affidavit by a person with personal knowledge of the fugitive's appearance
 - ii. Form also available on the Kansas AG's website
 - iii. Some states, such as Arizona, require a photo affidavit
- e. K.S.A. § 22-2723(a) – Required documents for pre-conviction extraditions
 - i. Extraditions *before* conviction
 - ii. Extradition application prepared by the Kansas prosecutor
 - 1. Use form AG-102 for fugitives who commit a crime while physically present in the State of Kansas
 - 2. Use form AG-101 for fugitives who commit an act while physically outside the State of Kansas, but which results in crime within the State of Kansas
 - iii. Certification and authentication of required court documents
 - 1. All court documents must be certified
 - 2. Please note, the majority of States now require any supporting court documents to be cross-certified
 - a. A cross-certification document is prepared by the district court clerk's office, under an Act of Congress, and signed by the issuing clerk, a judge, and then the clerk a second time, and then affixed with the Court's seal
 - b. This is *in addition to* the certification stamp the clerk puts on each of the documents
 - 3. Colorado, Missouri, Oklahoma, New Mexico, and Nebraska all require it be done this way and will reject them if they are not
 - iv. Requires court documents
 - 1. Complaint, Information or Indictment
 - a. Three copies of each
 - 2. Probable cause affidavit by law enforcement

- a. Three copies of each
 - b. NOT required if there is an indictment by a grand jury
 - 3. Outstanding local arrest warrant
 - a. Three copies of each
 - 4. Copies of each statute violated
 - a. Three copies of each statute
 - b. Does not need to be a formal copy
 - c. Printout from Westlaw or LexisNexis is fine
 - i. Please note, if your fugitive is charged with an older statute, say prior to the 2011 recodification, you will need a copy of the older statute(s)
- f. K.S.A. § 22-2723(b) – Required documents for post-conviction extraditions.
 - i. Extradition *after* conviction
 - 1. Probation violations
 - 2. Parole Violations
 - 3. Fugitives who abscond after plea or conviction, but before sentencing
 - a. In this case, a journal entry of the conviction and the motion to revoke bond should be included with the application
 - ii. Extradition application prepared by the Kansas prosecutor
 - 1. Use form AG-103
 - iii. Certification and authentication requirements are the same
 - iv. Required court documents
 - 1. Journal entry of judgment
 - a. Three copies each
 - b. If this is a second or subsequent probation violation, use the journal entry of probation violation, which will have the original journal entry of judgment attached
 - c. Basically, this document is to show the fugitive is currently released on probation
 - 2. Motion to revoke probation
 - a. Three copies each
 - 3. Report of violation from probation authority
 - a. Three copies each
 - 4. Order of probation listing conditions
 - a. Three copies each

- b. There must be something listing the conditions of probation ordered. If that is listed in the JE of Judgment, that is fine.
 - 5. Outstanding arrest warrant for violating terms and conditions of probation or parole
 - a. Three copies each
- g. K.S.A. § 22-2724 – Expense of extradition
 - i. If a fugitive who has been extradited back to Kansas is convicted of the charges for which extradition was sought, the costs of extradition may be assessed to the defendant

III. Procedures for Extradition

- a. Kansas fugitive arrested in another State
 - i. Time limitations
 - 1. Every State is a bit different
 - a. On page 21 of the Kansas Extradition Manual, there is a table comparing all time limitations for each UCEA State
 - 2. General rule
 - a. Governor's warrant must be served on the fugitive within 30 days of either arrest or arraignment depending on the State
 - i. If you're not sure when the clock started to tick, assume it is from arrest
 - b. Two extensions of 30 days each is usually permissible for a total of 90 days
 - c. If a Governor's warrant is not served on the fugitive within that 90 day period, the fugitive may be released
 - i. A fugitive may also be released earlier in a court's discretion
 - ii. Bond prior to extradition
 - 1. Bond is permitted under the UCEA
 - a. No bond is permitted if the fugitive is charged with a death penalty offense or an offense which would result in life in prison
 - 2. The bond is set at the discretion of the asylum state judge
 - a. Some states follow the bond amount issued in the local arrest warrant
 - b. They are not required to, and most do not
 - iii. Procedure
 - 1. The prosecutor prepared three copies each of:

- a. The application for requisition
 - b. Fugitive identification documents
 - c. Supporting court documents
 - d. Statutes violated
 2. Hardcopies of these documents must be mailed to the extradition administrator
 - a. Rhonda D. Arnold, Kansas Governor's Office
300 SW 10th Ave, Room 259-S
Topeka, KS 66612
 3. Once received, the application is sent to the Kansas AG's Office for review and approval
 4. If the application meets all legal requirements, it is returned to the Kansas Governor's Office and the requisition demand is sent to the asylum state governor's office
- iv. Timing of your application
1. Usually the Kansas Governor's Office can get extradition applications turned around within 7 to 10 days after receipt
 - a. Don't wait until the last minute
 - b. Delays for problems with documents, missing signatures, insufficient identification or rejection by the asylum state all happen and will cause delays
 - c. Applications made while the Legislature is in session also may be delayed
 2. Most every asylum state has a similar review process
 - a. Many States are much slower in processing for a variety of reasons
 3. If you have an extradition application that needs to be expedited, please contact the Kansas Governor's Office ahead of time
 - a. Some of our neighboring States will expedite if we can give them enough notice
- b. K.S.A. §§ 22-2710 & 22-2713 – Fugitives from another State arrested in Kansas
- i. K.S.A. § 22-2710
 1. 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

2. [T]hat he has the right to demand and procure legal counsel; and
 3. [I]f 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.
 4. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting attorney of the county in which the arrest is made and in which the accused is in custody, and it shall be the duty of the prosecuting attorney to notify said agent of the demanding state.
- ii. K.S.A. § 22-2713
1. A fugitive complaint must be filed by the Kansas prosecutor
 2. This complaint alleges that the fugitive is wanted on either outstanding charges or a probation/parole violation in another state
 3. The out of state warrant is outstanding and unserved
 4. The fugitive has been arrested in the State of Kansas
 - a. A local fugitive warrant may also be issued prior to arrest on the outstanding out of state warrant if there is sufficient information to establish probable cause that a fugitive from justice is present in the asylum jurisdiction
 - b. This is not usually the way it happens, but it is an available option
- iii. Pre-signed waivers of extradition
1. The Interstate Compact for Adult Offender Supervision requires probationers and parolees from another State who are being supervised in Kansas to pre-sign a waiver of extradition
 2. Pre-signed waivers can also be imposed as a condition of pre-trial bond
 3. Whether a judge honors the pre-signed waiver is a matter of discretion
 - a. There will always be problems if the pre-signed waiver is not counseled
 - i. Waivers must be knowingly and intelligently made
 - b. There is little to no case law mandating that one state honor another state's pre-signed extradition waiver
 4. Competency

- a. Competency issues are viable issue in extradition proceedings
 - i. State v. Patton, 285 Kan. 779, 176 P.3d 151 (2008)
 - 5. Long and short, don't count on a pre-signed wavier being honored
- iv. K.S.A. § 22-2715 – Time Limitations
 - 1. A fugitive from justice may be held in jail or on bond for thirty days from the date of arraignment, with two extensions of 30 days for a total of 90 days within the discretion of the court
 - a. State v. Odom, 10 Kan.App.2d 489, 704 P.2d 386 (1985)
 - 2. If the Governor's warrant does not arrive prior to 90 days running, the fugitive must be released under K.S.A. § 22-2717.
 - 3. However, if the Governor's warrant arrives after 90 days has passed, the warrant is still valid and may still be served on the fugitive constituting a valid arrest
 - a. In re Simpson, 2 Kan.App.2d 713, 586 P.2d 1389 (1978)
 - b. The 90 day time restriction does not affect the validity of a Governor's extradition warrant
 - 4. *Unique* to Kansas
 - a. In Kansas, if a fugitive is being held on local charges, in addition to an out of state warrant, 90 days *does not* being to run until the local charges are resolved
 - i. In re Lane, 17 Kan.App.2d 476, 845 P.2d 708 (1992) rev denied Dec. 28, 1992
 - b. This is *unique* to Kansas. Other states do not follow the same rule, so do not count on it if you need to extradite someone from another state
- v. K.S.A. §§ 22-2715 & 22-2716 – Bail
 - 1. K.S.A. § 22-2715
 - a. 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 22-2706, 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 give bail as provided in the next section, or until he shall be legally discharged.

2. K.S.A. § 22-2716

a. 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.

3. The amount of bail, or whether to grant it at all, lies within the discretion of the court

a. Exceptions for death penalty offenses and offenses which carry a sentence of life in prison

4. Bail is not required to match the demanding state's warrant

a. Although it is usually a good idea if it does

vi. Dismissal

1. If your fugitive case is dismissed, you need to contact the demanding state sheriff or prosecutor and let them know

a. Once arrested, the demanding state law enforcement usually removes their warrant from NCIC

c. Challenges to the validity of a Governor's warrant

i. When accused challenges extradition brought under the Uniform Criminal Extradition Act, Governor's warrant issued in extradition proceedings is presumed valid and regular in all respects, thus casting burden of proof upon petitioner to overcome prima facie case made by Governor's warrant.

1. King v. Hawes, 224 Kan. 335, 580 P.2d 1318 (1978)

ii. Whether a fugitive is guilty or innocent of crimes in another state is not a relevant inquiry when a fugitive challenges an extradition warrant

1. K.S.A. § 22-2720

2. State v. Henson, 221 Kan. 635 562 P.2d 51 (1977)

iii. The appropriate remedy for a fugitive challenging the validity of an extradition warrant is an application for a writ of habeas corpus

1. In re Mason, 245 Kan. 111, 775 P.2d 179 (1989)

- a. A fugitive making such a challenge is entitled to counsel, and failure to appoint counsel to an indigent fugitive is reversible error
 - b. Woody v. State, 215 Kan. 353, 524 P.2d 1150 (1974)
- iv. What can be challenged
 - 1. Identity
 - a. State v. Smith, 232 Kan. 128, 652 P.2d 703 (1982)
 - i. Even though guilty or innocence is not relevant, if a fugitive claims to have an alibi, that may be considered by a district court for issues of identity
 - 2. Validity of the Governor's warrant
 - a. When an accused challenges extradition in a habeas corpus proceeding brought under the Uniform Criminal Extradition Act, the governor's warrant issued in the extradition proceedings is presumed valid and regular in all respects, thus casting the burden of proof upon the petitioner to overcome the Prima facie case made by the governor's warrant
 - b. When a fugitive challenges inconsistencies in their name in the documents, the burden shifts to the State to prove identity
 - i. King v. Hawes, 224 Kan. 335, 580 P.2d 1318 (1978)
 - 1. Strict adherence to the rules of evidence is not required
 - c. Missing documents in the Governor's warrant may also be challenged
 - 3. Fugitive is not actually a fugitive

- IV. Recurring problems
 - a. Missing documents
 - b. Missing signatures
 - c. Court documents are not cross-certified and authenticated
 - i. Most States now require this, despite the statutory language in the UCEA
 - d. 90 days is miscalculated
 - e. Application is sent to the Kansas Governor's Office too close to 90 days running
 - f. Fugitive is arrested in a State where 90 days is not the rule
 - i. Don't assume the asylum state operates on a 90 days time limit
 - g. Fugitive is arrested in a non-UCEA state
 - i. Call the Kansas Governor's Office if this happens before you begin
 - h. Fugitive waives before the Governor's warrant is issued

All extradition forms and additional extradition and detainer information may be found on the Kansas Attorney General's website under prosecution resources.

<https://www.ag.ks.gov/public-safety/prosecutor-resources>