



MINNESOTA JUDICIAL TRAINING UPDATE



WAIVER OF EXTRADITION ADVISORY

QUESTION: What procedure should a judge follow when a defendant, charged with being a “Fugitive from Justice,” makes a Rule 5 first appearance on an in-custody or bail calendar?

WAIVER OF EXTRADITION ADVISORY (M.S. §629.10)

You are charged with the crime of _____ under the laws of the State of _____, County of _____, and with being a fugitive from justice.

You have certain rights:

1. You have the right to be informed of the demand made for your surrender and of the crime with which you are charged;
2. You have the right to an attorney. If you are unable to afford an attorney, one will be appointed to represent you at no cost to you;
3. You have the right to challenge your extradition by requesting the issuance of a Governor’s Rendition Warrant and by filing a Writ of Habeas Corpus;
a) Note: Any application for a writ for habeas corpus happens after the Governor’s Rendition Warrant arrives. *State ex rel. Engel v. Fletcher (Ramsey County Sheriff)*, 659 N.W.2d 799 (Minn.App.2003).
4. You can waive these rights and be taken back to the State of _____. Any such waiver must occur and be signed in the presence of a judge. M.S. 629.24.

WHAT DO YOU WISH TO DO?

DEFINITIONS:

- 1) **GOVERNORS REQUISITION WARRANT (issued from demanding state)** -- formal request by the Governor of the demanding state to the Governor (the asylum state) for the return of an individual for purposes of criminal trial or punishment.
- 2) **GOVERNORS RENDITION WARRANT (issued from asylum state)** -- directs the return of an individual to the demanding state or nation.

IN COURT PROCEDURES:

- 1) **ARREST:** Once arrested, the fugitive must be taken before a judge “with all practicable speed” and a complaint charging defendant with Fleeing from Justice must be made. M.S. 629.13-14; UCEA (Uniform Criminal Extradition Act); M.S. 480.059 Subd. 7.
- 2) **ADVISORY OF RIGHTS** – M.S. 629.10. (see page one for sample). The Court is NOT to ask the defendant to enter a plea to the charge(s) from the demanding state.
- 3) **WAIVER OF EXTRADITION** – M.S. 629.24. A fugitive may waive the issuance and service of a Governor’s Rendition Warrant and other extradition proceedings by execution of a waiver. The waiver must be:
 - a) in writing and executed in the presence of a judge;
 - b) a copy must be delivered to the governor of the asylum state (Minnesota) and to the agent from the demanding state to whom the fugitive is surrendered.

IF FUGITIVE WAIVES EXTRADITION - JUDGE SHOULD CONSIDER THE FOLLOWING:

- **NO BAIL** – Once the fugitive signs a waiver, the fugitive agrees to return to the demanding state accompanied by a peace officer and thus is in the same legal position as if a Governor’s Rendition Warrant was issued. Bail should not be set after waiver because the fugitive must be available to be picked up by the peace officers of the demanding state.
- **HOW LONG:** The court should set a time for how long the demanding state has to pick up the defendant, and the Court should order the sheriff to advise the demanding state of how long they have to come and get the defendant.
- **MAXIMUM 30 DAYS:** There is no set state law on how long the demanding state should have. Some courts give a week, some two weeks. A court should not give the demanding state more than 30 days without ordering a court hearing to ascertain what the problem is.

- **POWER TO RELEASE:** If the demanding state does not come in a reasonable period, the Court has the power to release the defendant but not the power to quash the warrant issued by the demanding state.
- 4) **NO WAIVER OF EXTRADITION** – A defendant can challenge the extradition process by requesting a Governors Rendition Warrant and a Writ of Habeas Corpus. The Writ of Habeas Corpus happens after the Governor’s Rendition Warrant arrives.
- a) **Detention (30 plus 60):** If the fugitive does not waive the right to challenge extradition, the fugitive may be detained for a period of up to 30 days to enable a subsequent arrest pursuant to a Governor’s Rendition Warrant. If the fugitive is not arrested pursuant to the Governor’s Rendition Warrant during this first **30** day period, the fugitive may be detained for a further period of up to **60** additional days. M.S. §§ 629.15, 629.17.
- Note:** A fugitive cannot be held in custody or on bail or bond beyond the 90 day limit. *State v. Phillips*, 587 N.W.2d 29 (Minn. 1998).
- b) **Bail** – A fugitive is entitled to bail while being held pursuant to a fugitive warrant unless charged with an offense punishable by life imprisonment or death in the demanding state. M.S. §629.16. The Court should ask the County Attorney what amount of bail the demanding state is requesting.

AFTER GOVERNOR’S RENDITION WARRANT IS ISSUED

- 1) **Appearance in Court and Rights Advisory:** Once arrested pursuant to the Governor’s Rendition Warrant, the fugitive must be brought before a judge and given a rights advisory (same as before – see page one for sample).
- a) Arrest by Rendition Warrant gives the fugitive an opportunity to challenge the validity of extradition by bringing a writ of habeas corpus. 629.10
- b) The fugitive has the right to have the proceedings continued for a reasonable amount of time in order to apply for a writ of habeas corpus. M.S.629.10.
- 2) **Bail:** A fugitive being held pursuant to a Governor’s Rendition Warrant awaiting a habeas corpus hearing or transport back to the demanding state is **NOT** entitled to bail.
- Note:** Neither the UCEA nor the federal statute provide for bail after the issuance of a rendition warrant. *Dyar v. Omodt*, No. C2-88-2141 (Minn. App. Mar. 21, 1989) (unpublished); *State v. Moeller*, 234 N.W. 649 (Minn. 1931); M.S. 629.16.

HABEAS CORPUS HEARING

A. THREE BASIC RULES

- 1) The habeas corpus hearing occurs after the Governor's Rendition Warrant is issued.
- 2) The Rendition Warrant is presumptive or prima facie proof that all constitutional and statutory requisites have been met by the demanding state and extradition is proper. *State v. Phillips*, 587 N.W.2d 29 (Minn. 1998);
- 3) Only "slight evidence" is required to support the warrant. *Perez v. Sheriff of Watonwan County*, 529 N.W. 2d 346 (Minn.App. 1995).

B. ONLY FOUR (4) ISSUES MAY BE RAISED IN A HABEAS CORPUS HEARING

If these four requirements are met, release will be denied and the fugitive will be surrendered to the demanding state. *State ex rel. Gegenfurtner v. Granquist*, 135 N.W.2d 447 (1965). The four issues are:

1) Whether demanding state has charged the fugitive with the commission of a crime:

- a) A fugitive may be extradited for any offense punishable by law of the demanding state. M.S. 629.02. It is irrelevant whether the offense is also a criminal offense in the asylum state (Minnesota). M.S. 629.03;
- b) The question of the fugitive's guilt or innocence is irrelevant. M.S. 629.20; *State v. Coddington*, 145 N.W.2d 866 (1966);
- a) Courts of the asylum state are bound to accept the demanding state's judicial determination of probable cause. *Michigan v. Doran*, 439 U.S. 282, 99 S. Ct. 530 (1978); M.S. 629.03. *State v. Limberg*, 142 N.W. 2d 563 (Minn. 1966);
- c) Courts of the asylum state cannot rule upon allegations of a fugitive that constitutional rights are being denied by the demanding state. *State v. Bailey*, 262 N.W.2d 406 (Minn. 1977) (double jeopardy); *State ex rel. Chamberlain v. Martinco*, 179 N.W.2d 286 (1970) (speedy trial);
- d) The asylum state may not inquire into the motive behind an extradition request if the extradition warrant shows that the accused has been charged with a crime in the demanding state. *State ex rel. Arthurs v. Omodt*, 399 N.W.2d 221 (Minn. App. 1987).

2) Whether the accused is the person charged:

- a) The Rendition Warrant is prima facie proof of the identity of the accused as the person charged. If the fugitive testifies that he is not the person sought, the state must prove he is. The state's burden to support the warrant is only "slight evidence". *State ex rel. Swyston v. Hedman*, 179 N.W.2d 282 (Minn. 1970) (stating that the same rule from *Limberg* addressing proof of presence applies to proof of identity as well);

- b) The best methods of proving the identity of the accused are through comparison of fingerprints or photographs or use of in-court identification by a person familiar with the fugitive. *State v. Collins*, No.CX-94-1828 (Minn. App. Feb. 28, 1995) (unpublished).
- c) Detailed inquiry into background of fugitive is not appropriate;
- d) Error in spelling of arrestee's name is a serious error as it poses a risk of misidentification. Error can be overcome with fingerprints or social security number. *State ex rel. Kirkendoll v. Zacharias*, 410 N.W. 2d 56 (Minn.App. 1987);
- e) The guilt or innocence of the fugitive as to the crime for which the fugitive is charged may not be inquired into, except as it may be involved in identifying the fugitive as the person charged with the crime. M.S. 629.20.

3) Whether accused was present in demanding state at time of commission of crime:

- a) Or alternatively, whether the accused was outside the state while committing an act intentionally resulting in a crime within the state. M.S. 629.06;
- b) If the fugitive presents clear and convincing proof of absence, the burden shifts to the State, but the Court can grant a thirty (30) day continuance to enable the State to produce testimony. *State v. Limberg*, 142 N.W. 2d 563 (Minn. 1966);
- c) If fugitive has been convicted of an offense and flees while awaiting sentencing or while on parole, the conviction represents adjudication of presence in the demanding state at the time of the charge under application of the full faith and credit clause;
- d) Identification of defendant picked out of photo lineup can be used as evidence of presence in demand state. *State v. Babb*, 393 N.W.2d 705 (Minn.App. 1986).

4) Whether the extradition papers are in order:

- a) The mere fact that the fugitive warrant varied from the terms of the rendition warrant is not fatal to the extradition proceedings. *State ex rel. Wagner v. Hedman*, 195 N.W.2d 420 (1972). As long as there is substantial compliance with the UCEA and the papers reasonably establish that the fugitive has been charged with a crime or violation in the demanding state, the extradition papers are not defective. *State ex rel. Brown v. Telander*, 163 N.W.2d 858 (1968); *Supra, Limberg*. M.S. 629.03.

APPEALS: Can Habeas Corpus Rulings Be Appealed? YES:

- a) Both the fugitive and the state have the right of appeal from the final order to the Court of Appeals. M.S. 589.29;
- b) Written notice of appeal must be filed and served within sixty (60) days after service of the final order. Minn. R. Civ.App. P. 104.01, M.S. 589.29.

SOURCE: Minnesota Judges Bench Book, 6th Edition, 2012, EXTRADITION, Chapter 24.