CHAPTER 6

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Interstate Rendition and the Agreement on Detainers

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Cross-Reference:
Law of arrest, § 17.5

§ 6.1 INTRODUCTION

This chapter addresses the rights and remedies available under the Uniform Criminal Interstate Rendition Act[1] and the Interstate Agreement on Detainers.[2] These enactments provide the procedures governing the return of persons in one state to another state in connection with criminal prosecutions in the second state.

[1] Codified as G.L. c. 276, §§ 11–20R (Stat. 1937, c. 306).

[2] Stat. 1965, c. 892, codified as G.L. c. 276 App., §§ 1-1 through 1-8.

The Agreement on Detainers may be used if the defendant is being held in the custody of another state. It may be invoked by either the prisoner or the prosecuting officials, permits resolution of the charges underlying the detainers, and sets time limits for trying them. Prosecuting officials also may utilize the more formal Uniform Criminal Interstate Rendition Act, which applies whether or not the defendant is in custody and does not impose time limits on the receiving state.

A separate issue is the remedy for a defendant who is forcibly abducted from another state or country to face criminal charges. Under the so-called *Ker-Frisbie* doctrine, the Supreme Court has long held that at least under federal law forcibly abducting a defendant from a foreign country or another state for purposes of criminal prosecution does not deprive a state or federal court of jurisdiction to try and convict that defendant.[3] The one limitation to this doctrine is that a defendant forcibly brought from a foreign country to face criminal charges in this country may not be prosecuted in violation of the terms of an extradition treaty between the United States and the country from which he was brought.[4]

§ 6.2 THE AGREEMENT ON DETAINERS

§ 6.2A. GENERALLY

[3] *See* Ker v. Illinois, 119 U.S. 436, 444 (1886) (upholding conviction of defendant kidnapped in Peru and delivered to the United States for prosecution of state-law charges); Frisbie v. Collins, 342 U.S. 519, 522 (1952) (upholding conviction of defendant kidnapped in Chicago by Michigan law-enforcement officers for trial in Michigan); *see also* Mahon v. Justice, 127 U.S. 700, 715 (1888) (citing *Ker* in holding that defendant's illegal kidnapping by private parties in West Virginia and removal to Kentucky for trial on criminal charges did not under federal law deprive Kentucky of jurisdiction to try and convict him).

[4] *See* United States v. Alvarez-Machain, 504 U.S. 655, 663 (1992) (holding that the forcible abduction of a Mexican national from Mexico did not prevent his trial in federal court for violating United States law because the extradition treaty with Mexico did not forbid such abductions); *see also* United States v. Noriega, 117 F.3d 1206, 1212-15 (11th Cir. 1997), *cert. denied*, 523 U.S. 1060 (1998) (holding that neither the existence of an extradition treaty with Panama nor due process deprived federal courts of jurisdiction to try former Panamanian dictator Manuel Noriega for violating United States drug laws where the United States military forcibly abducted Noreiga from Panama for trial in the United States); United States v. Torres Gonzalez, 240 F. 3d 14, 16 (1st Cir. 2001) (applying *Alvarez-Machain* to defeat claimed exception to *Ker-Frisbie* doctrine); United States v. Struckman, 611 F.3d 560, 573-74 (9th Cir, 2010) (same).

Some courts have recognized a second, narrow exception to the *Ker-Frisbie* doctrine based on "shocking and outrageous governmental conduct" in obtaining the defendant's presence before the court. *See* United States v. Struckman, 611 F. 3d 560, 573 (9th Cir. 2010). Although it is not at all clear what conduct meets this test, *see id*. at 573 n. 8, it is a very narrow exception applying to conduct described as "so shocking and outrageous 'as to violate the universal sense of justice.'" *Id*. *See also* United States v. Toscanino, 500 F. 2d 267, 271-75 (2nd Cir. 1974) (recognizing due-process limitation on *Ker-Frisbie* where the government has engaged in a "deliberate, unnecessary and unreasonable invasion of the accused's constitutional rights"). *But see*, *e.g.,* United States v. Cordero, 668 F.2d 32, 36 (1st Cir. 1981) (characterizing the *Tolscanino* exception to *Ker-Frisbie* as having been "narrowly interpreted to cover only egregious cases").

The Commonwealth became a party to the Interstate Agreement on Detainers in 1966 by virtue of the legislature's adoption of its provisions.[5] The Agreement provides prisoners in party jurisdictions [6] with a means of obtaining a final disposition on any pending charges in another party jurisdiction, and it affords prosecutors a method for obtaining temporary custody of prisoners in other party jurisdictions for purposes of bringing them to trial.

The Agreement provides specific time limits within which pending charges must be brought to trial when either a prisoner seeks the trial under article III (180 days)[7] or a prosecutor requests temporary custody of a prisoner under article IV (120 days).[8] Although the sanction provided in the Agreement for violation of the prescribed time periods is dismissal,[9] the Massachusetts Appeals Court has declined to dismiss serious charges when they did not involve the abuses that the Agreement sought to correct and the violation of the time periods was inadvertent.[10] The court acknowledged

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[5] The legislature enacted the Agreement's provisions in Stat. 1965, c. 892, § 1, approved January 7, 1966. The agreement appears in G.L. c. 276 App., §§ 1-1 through 1-8.

[6] A list of the signatory states appears in the Annotated Laws of Massachusetts. The United States is also a party to the Agreement (Pub. L. No. 91-538, 84 Stat. 1397 (1970), 4 U.S.C. § 112(a) (1982), and as an interstate compact approved by Congress, the United States Supreme Court is the final interpreter of the Agreement. Commonwealth v. Wilson, 399 Mass. 455, 462, n.10 (1987) (citing West Virginia ex rel. Dyer v. Sims, 341 U.S. 22, 28 (1951)).

[7] A reasonable time to act on motions (except for seven days after the pretrial conference) tolls the 180-day period of the IAD even if a continuance is not requested. Continuances to which the defendant assents are also not included in the calculation of time. *See* Commonwealth v. Baker, 36 Mass. App. Ct. 901, 901 (1994). Criminal defense counsel's agreement to a trial date outside the time period set by the IAD has been held to bar a defendant from seeking dismissal on the ground that trial did not occur within the 180-day period, even though the defendant subsequently objected. New York v. Hill, 120 S. Ct. 659, 664 (2000). A failure by the Commonwealth to comply precisely with the written notice provision of Rule 36(d)(3) was also held not to require dismissal of the charges against a defendant who received actual notice of the charges pending against him in Massachusetts and of his right to request a speedy trial. The purpose of the rule was held merely to be to make certain that the defendant has knowledge of his right to a speedy trial. Commonwealth v. Grant, 418 Mass. 76, 80 (1994).

[8] Article VI excludes any period of time during which the prisoner is unable to stand trial and bars anyone who is adjudged to be mentally ill from availing themselves of any remedies under the Agreement. *See also* United States v. Neal, 36 F.3d 1190, 1210 (1994) (delay attributable to disposition of motions filed by defendant is excludable from the 120-day computation); Whiting v. United States, 28 F.3d 1296, 1306 (1st Cir. 1994), *cert. denied,* 115 S. Ct. 378 (1994) (delay caused by a court's resolution of pending codefendant motions may qualify as excludable time under article IV(c) of the IAD).

[9] *See, e.g.,* Commonwealth v. Montefusco, 1999 Mass. Super. LEXIS 442, 448 (Nov. 22, 1999) (ordering the dismissal of four indictments due to there having been no trial within 180 days from the date of the first request by the defendant).

[10] Commonwealth v. Petrozziello, 22 Mass. App. Ct. 71, 80–81, *further app. rev. denied,* 397 Mass. 1104, *cert. denied,* 479 U.S. 852 (1986) (involving first-degree murder and armed robbery charges). One of the objectives of the Agreement was to eliminate abuses of the detainer process, including the frequent lodging of detainers which lacked an adequate factual basis and which were allowed to remain in effect without resolution until the prisoner completed his or her sentence. *Petrozziello,* 22 Mass. App. Ct. at 76; The Agreement, G.L. c. 276 App., § 1-1, art. I. One of the Agreement's express purposes was to remedy "uncertainties [due to the abuse of detainers] which obstruct programs of prisoner treatment and rehabilitation" by encouraging "the expeditious and orderly disposition of such charges and determination of

that less serious cases may require a literal application of the Agreement's sanctions but made it clear that, if the charges are serious, the court will consider dismissal appropriate only where a prisoner can show that his or her rehabilitation has been adversely affected by the violation of the Agreement.[11] This approach has been called into serious question by a subsequent Supreme Court admonition to construe the dismissal provisions of the IAD literally.[12] For additional discussion of speedy trial rights under this Agreement, see *infra* § 23.2E.

Article V details the procedures governing the transfer of custody from one jurisdiction to the other pursuant to the Agreement and provides that, in the case of a federal prisoner, the United States may either give temporary custody to the receiving state or produce the prisoner in federal custody at the place for trial.[13] The prisoner is entitled to dismissal with prejudice if the receiving state either does not accept custody of the prisoner or fails to begin trial on the relevant charges within the time periods prescribed by articles III and IV.[14] The Agreement also requires the receiving state to hold the prisoner "in a suitable jail or other facility regularly used for persons awaiting prosecution" and to return custody to the sending state as soon as practical.[15]

Time continues to run on the sentence being served in the sending state while the receiving state has temporary custody pursuant to the Agreement except for the accrual of good time which depends on the law of the sending state.[16]

§ 6.2B. PRISONER'S REQUEST

Article III of the Agreement sets out the procedures to be followed by a prisoner "who has entered upon a term of imprisonment"[17] in a party jurisdiction (the

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the proper status of any and all detainers based on untried indictments, informations or complaints." G.L. c. 276 App., § 1-1, art. I; *see also Petrozziello,* 22 Mass. App. Ct. at 76.

[11] Commonwealth v. Petrozziello, 22 Mass. App. Ct. 71, 81-82 (1986).

[12] *See* Alabama v. Bozeman, 533 U.S. 146, 153-56 (2001) (Defendant who spent one night in county jail, appeared in court the next morning and was transported back to federal prison that evening, held entitled to dismissal of state charges because the "anti-shuttling" provision of the IAD was violated). While *Petrozziello* has not to date been overruled in light of the Court's holding in *Bozeman*, neither has it been cited for the proposition that a court has discretion in cases involving "serious charges" to ignore the apparently categorical mandate of dismissal with prejudice if the defendant's rights under the IAD are violated.

[13] G.L. c. 276 App., § 1-1, art. V(a).

[14] G.L. c. 276 App., § 1-1, art. V(c); *see* Commonwealth v. Copson, 444 Mass. 609, 611-13 (2005) (discussing operation and effect of IAD provisions).

[15] G.L. c. 276 App., § 1-1, art. V(d), (e). *But see* Cross v. Cunningham, 87 F.3d 586, 587-88 (1st Cir. 1996) (delayed return, even if violative of IAD, held not cognizable under 28 U.S.C. § 2254 and further held not to violate the Constitution under specific facts of case).

[16] G.L. c. 276 App., § 1-1, art. V(f).

[17] The clock will not run on the limitations period prescribed by articles III and IV during any time when the prisoner is being held for an alleged parole violation or otherwise is not actually serving a term of imprisonment. *See* Commonwealth v. Tracy, 50 Mass. App. Ct. 435, 441 (2000) ("Here, the defendant did not start to serve a 'term of imprisonment' until…the date he was sentenced on the Federal charges and, therefore, any attempt to invoke the Agreement prior to that date was premature); *see also* Commonwealth v. Petrozziello, 22 Mass. App. Ct. 71, 78 (1986), *further app. rev. denied,* 397 Mass. 1104, *cert. denied,* 479 U.S. 852.

sending state) and who seeks resolution of detainers[18] lodged by a prosecutor from another party jurisdiction (the receiving state). The prisoner initiates the process by sending the warden or other official in whose custody he is held a notice of the place of imprisonment and a request for a final disposition of the charges on which the detainer is based. The official must promptly forward these papers, together with a certificate that sets forth specified details regarding the time remaining to be served on the present sentence, to the appropriate prosecuting official and court by registered or certified mail.[19] Strict compliance by the prisoner with these procedures is critical, including ensuring the receiving state's receipt of the required certificate from the sending state's custodial official.[20] As the S.J.C. put it, "whatever else it may require of a prisoner wishing to enforce the [IAD's] dismissal penalty, [the law] requires at the very least that he provide the receiving state with all of the information called for in art. III(a), and a certificate by the [sending state's] appropriate custodial official."[21] If the receiving state does not receive all of the information and documents required under article III – whether due to a failure by the prisoner or the sending state – the IAD's speedy trial rights do not go into effect.[22]

A prisoner who follows these procedures is entitled to be brought to trial within 180 days after "he shall have caused to be delivered to the prosecuting officer and the

[18] Although article II contains definitions of certain terms used in the Agreement, the term detainer is neither defined here nor elsewhere in the Agreement. The House and Senate Reports supporting the enactment of the Agreement by Congress defined detainer as " 'a notification filed with the institution in which a prisoner is serving a sentence advising that he is wanted to face pending criminal charges in another jurisdiction.' " Commonwealth v. Wilson, 399 Mass. 455, 460 n.7 (1987) (quoting H.R. Rep. No. 91-1018, at 2 (1970), and S. Rep. No. 91-1356, at 2 (1970), and citing United States v. Mauro, 436 U.S. 340, 359 (1978)). The U.S. Supreme Court has defined the term detainer to mean, "a legal order that requires a State in which an individual is currently imprisoned to hold that individual when he has finished serving his sentence so that he may be tried by a different State for a different crime." Alabama v. Bozeman, 533 U.S. 146, 148 (2001). *See* Commonwealth v. Copson, 444 Mass. 609, 611 n.1 (2005) (quoting and adopting *Boseman*'s definition of "detainer").

[19] G.L. c. 276 App., § 1-1, art. III(a), (b).

[20] *See* Commonwealth v. Copson, 444 Mass. 609, 624-25 (2005) (holding that 180-day period for trial commences only when the prisoner demonstrates that he has provided and the Commonwealth has received all of the information required by art.III of the IAD, including the sending state's certificate of inmate status). *See also* Commonwealth v. Malone, 65 Mass. App. Ct. 285, 286-87 (2005) (reversing IAD dismissal of murder indictment where 180-day limitation for trial did not commence because the sending state's certificate of inmate status was not received in conjunction with the defendant's request for final disposition of charges); Commonwealth v. Tracy, 50 Mass. App. 435, 441 (2000) (holding IAD inapplicable where defendant attempted to invoke the IAD by writing various letters to the clerk of the Superior Court and to the district attorney's office, but failed to write to the warden of the facility where he was serving his sentence).

A prisoner seeking federal habeas relief for an apparent violation of IAD rights can expect similar hostility to his claim. *See* Reed v. Farley, 114 S. Ct. 2291, 2294 (1994), rehearing denied, 115 S. Ct. 25 (1994) (state court's failure to observe IAD article IV(c)'s 120-day rule is not cognizable under 28 U.S.C. § 2254 when the defendant registered no objection to the trial date at the time it was set, and suffered no prejudice attributable to the delayed commencement); Cross v. Cunningham, 87 F.3d 586, 588 (1st Cir. 1996) (delayed return, even if violative of IAD, held not to violate Constitution under specific facts of case).

[21] Commonwealth v. Copson, 444 Mass. 609, 620-21 (2005).

[22] *Id*. at 624-25.

appropriate court" the required notice and request.[23] The only stated exception allows the court in the receiving state to grant "any necessary or reasonable continuance" on a showing of good cause "in open court, [with] the prisoner or his counsel being present."[24]

A request by a prisoner for final disposition that follows the specified procedures will operate as a request with respect to all untried charges for which detainers have been lodged by the same or other prosecuting officials in the receiving state.[25] If the receiving state returns the prisoner to the sending state without trying him or her on any of these pending charges, the Agreement provides for the dismissal with prejudice of all such charges.[26]

By making a request under the Agreement, the prisoner waives extradition, consents to being produced in court in the receiving state and further consents to being

[23] G.L. c. 276 App., § 1-1, art. III(a). Assuming that the receiving state has already lodged a detainer (*see* Commonwealth v. Bell, 11 Mass. App. Ct. 1035, 1035 (1981)), the U.S. Supreme Court has held that the 180-day period commences on actual receipt of the prisoner's request by the receiving state's prosecuting authority. Fex v. Michigan, 507 U.S. 43, 52 (1993) (180-day period begins with the actual receipt by the receiving state's authority of the request). *See* Commonwealth v. Copson, 444 Mass. 609, 619 n. 11 (2005) (noting Massachusetts courts are bound by Federal interpretation of the IAD and overruling *Commonwealth v. Martens*, 398 Mass. 674, 677 (1986) in which the SJC had held that the 180-day period commenced when the prisoner transmitted his request to the receiving state authorities). Failure to try the defendant within the 180-day period will result in dismissal of the indictment even if the period is exceeded due to a continuance required by a rule of court. *See* Commonwealth v. Healy, 26 Mass. App. Ct. 990, 990–91 (1988) (rescript).

[24] G.L. c. 276 App., § 1-1, art. III(a). *See, e.g.*, Commonwealth v. Baker, 36 Mass. App. Ct. 901, 901 (1994); Commonwealth v. Dickson, 386 Mass. 230, 232 (1982) (an "abundance of 'good cause' " for a continuance beyond the specified time limits was shown where the trial judge and the prisoner's attorney were involved in a murder trial that received priority because necessary witnesses were attached to a United States Navy vessel slated to leave port for an extended voyage). Criminal defense counsel's agreement to a trial date outside the time period set by the IAD has been held to bar a defendant from seeking dismissal on the ground that trial did not occur within the 180-day period, even though the defendant subsequently objected. New York v. Hill, 120 S. Ct. 659, 664-65 (2000). The Appeals Court has also excluded time periods during which the defendant requested or acquiesced in requests for continuances even if there was no explicit finding of "good cause" for the delay. *See* Commonwealth v. Corbin, 25 Mass. App. Ct. 977, 979–80 (1988).

[25] G.L. c. 276 App., § 1-1, art. III(d). *See* Commonwealth v. Copson, 444 Mass. 609, 611-13 (2005).

[26] G.L. c. 276 App., § 1-1, art. III(d). Under a 1988 amendment to the IAD as adopted by Congress, if the United States is a "receiving state," the trial court has discretion in the case of an IAD violation to dismiss with or without prejudice. In exercising that discretion, the court is to consider the following factors: "[t]he seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of the agreement on detainers and on the administration of justice." Interstate Agreement on Detainers, §9, 18 U.S. Code App. 2. Moreover, under the federal version of the IAD, "it shall not be a violation of the agreement on detainers if prior to trial the prisoner is returned to the custody of the sending State pursuant to an order of the appropriate court issued after reasonable notice to the prisoner and the United States and an opportunity for a hearing." *Id*.

returned to the sending state.[27] An escape by the prisoner after making a request under the Agreement effectively voids the request.[28]

§ 6.2C. PROSECUTOR'S REQUEST

Article IV contains the procedures to be followed by a prosecutor in obtaining temporary custody of a prisoner held in another party jurisdiction for purposes of trying charges pending in the prosecutor's state. The prosecutor must present a written request, which must be approved, recorded, and transmitted by the court having jurisdiction over the pending charges, to the appropriate authorities in the state having custody of the prisoner.[29] The latter, or sending state, must wait thirty days before honoring the request, during which time the governor of the sending state may disapprove the request on his or her own motion or on the prisoner's motion.[30]

As with requests by prisoners under article III, the sending state is charged with notifying all other prosecutors and courts in the receiving state who have lodged detainers against the prisoner.[31] If the receiving state returns the prisoner without trial on any such pending charges, the Agreement provides for dismissal of the charges with prejudice.[32] The Supreme Court, in *Alabama v. Bozeman*,[33] has made clear that this provision is to be construed literally. A violation of the Agreement will not be considered "technical, harmless or *de minimis*."[34]

When the prosecutor, rather than the prisoner, seeks the prisoner's return, the trial must begin within 120 days of the prisoner's arrival in the receiving state.[35] The trial court may grant a reasonable continuance of this period under the same terms as apply to article III requests.[36]

Unlike a prisoner-initiated request, a prisoner whose custody is sought by the receiving state may contest the legality of his involuntary return to the receiving state.[37]

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[27] G.L. c. 276 App., § 1-1, art. III(e).

[28] G.L. c. 276 App., § 1-1, art. III(f). *See* Commonwealth v. Giordano, 9 Mass. App. Ct. 888, 889 (1980); Commonwealth v. Anderson, 6 Mass. App. Ct. 492, 493-4 (1978).

[29] G.L. c. 276 App., § 1-1, art. IV(a).

[30] G.L. c. 276 App., § 1-1, art. IV(a).

[31] G.L. c. 276 App., § 1-1, art. IV(b).

[32] G.L. c. 276 App., § 1-1, art. IV(e). *But see* Commonwealth v. Petrozziello, 22 Mass. App. Ct. 71, 80–81 (1986), *further app. rev. denied,* 397 Mass. 1104, *cert. denied,* 479 U.S. 852.

[33] 533 U.S. 146, 121 S. Ct. 2079, 2084 (2001) (Defendant who spent one night in county jail, appeared in state court the next morning and was transported back to federal prison that evening, held entitled to dismissal of state charges because the "anti-shuttling" provision of the IAD was violated).

[34] *Id. See* United States v. Kelley, 402 F.3d 39, 42 (1st Cir. 2005) (noting that in light of *Bozeman*'s holding there are no IAD exceptions for technical or *de minimis* errors, the only question being "whether there is a violation of the IAD at all").

[35] G.L. c. 276 App., § 1-1, art. IV(c).

[36] G.L. c. 276 App., § 1-1, art. IV(c). *See supra* note 24.

[37] G.L. c. 276 App., § 1-1, art. IV(d). Effective April 24, 1996, an application for a writ of habeas corpus in federal court "shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State; or there is an absence of available

As the following discussion of the Uniform Interstate Rendition Act makes clear, the Agreement is not the exclusive method available to prosecutors seeking temporary custody for purposes of trying pending indictments. However, even where the prosecutor proceeds under the Uniform Act, the provisions of the Agreement, including its applicable time limits and sanctions, may be triggered by a prosecutor's issuance of the functional equivalent of a formal request under the Agreement. For example, a writ of habeas corpus ad prosequendum constitutes a request for temporary custody within the meaning of article IV(a) and triggers the applicable provisions and deadlines of the Agreement.[38]

§ 6.3 UNIFORM CRIMINAL INTERSTATE RENDITION ACT

The Uniform Criminal Interstate Rendition Act[39] is codified as G.L. c. 276, §§ 11–20R.[40] It governs the procedures to be followed in securing the presence of a person charged with a crime in one state (the demanding state) who is present in another state (the asylum state). Unlike the Agreement on Detainers, the Uniform Act provides prosecutors with a means for securing the presence of persons who are not already in another state's custody. Indeed, the Uniform Act may be used to send a person to a state in which he was never even present for criminal trial based on allegations of non-support.[41] The procedures are somewhat more formal and cumbersome, but there are no time limits or other constraints once the person is delivered to the state seeking custody.

§ 6.3A. PROCEDURE

On showing before a court that a person in the asylum state has been charged with a crime, has escaped lawful confinement, or has violated the terms of bail, probation, or parole in another state, the court in the asylum state may issue a warrant for such person's arrest.[42] The affidavit of "any credible person" in the demanding state is also sufficient to justify the issuance of a warrant and complaint.[43] The person may

State corrective process; or circumstances exist that render such process ineffective to protect the rights of the applicant." *See* 28 U.S.C. § 2254(b). *See also infra* ch. 44.

[38] Commonwealth v. Wilson, 399 Mass. 455, 463–64 (1987); United States v. Mauro, 436 U.S. 340, 361–62 (1978).

[39] The Act is sometimes also referred to as "the Uniform Criminal Extradition Act." *See, e.g.*, Commonwealth v. Cabral, 443 Mass. 171, 178 (2005).

[40] The requirements of the statute may apply to a variety of interesting contexts. *See* Commonwealth v. Wilkinson, 415 Mass. 402, 404-05 (1993) (agent for bail bondsman permitted to raise defense of lawful authority at trial, but Court held prospectively that such agents must comply with G.L. c. 276, §§ 11–20R).

[41] Vasquez, petitioner, 428 Mass. 842, 844-45 (1999) (no unconstitutional restraint on liberty where petitioner was arrested in Massachusetts upon a requisition from the Governor of Oregon, requesting that the petitioner be extradited to Oregon to answer a charge of criminal nonsupport of his children, who resided in Oregon with their mother).

[42] G.L. c. 276, § 20A. *See also* James, Petitioner, 410 Mass. 674 (1991) (defendant was "charged with a [California] crime" until California sentence completed).

[43] G.L. c. 276, § 20A. *See* Commonwealth v. Wilkinson, 415 Mass. 402, 405 (1993) (bail bondsman is an example of a credible person).

also be arrested without a warrant "upon reasonable information that the accused stands charged in another state with a crime punishable by death or by imprisonment for a term exceeding one year."[44]

The accused may then be held, provided a complaint issues alleging she is a fugitive from justice, for up to thirty days to permit issuance and service of a governor's warrant pursuant to a demand from the state where the crime was committed (the demanding state).[45] The arrestee is entitled to bail on the complaint unless charged with an offense punishable by death or life imprisonment under the laws of the demanding state.[46] If the accused is not arrested on a governor's warrant within thirty days, the court may discharge him or her or extend the period for an additional sixty days.[47] The accused may also waive service of the governor's warrant by consenting to being returned to the demanding state.[48] It is the duty of the court that accepts such a waiver to inform the accused of the right to issuance and service of the governor's warrant and to contest rendition.[49]

A person who is not already held in connection with criminal proceedings[50] may be conveyed involuntarily to another state pursuant to the Uniform Act only after being arrested on a warrant issued by the governor of the asylum state. The procedures for issuance and service of such a warrant are set forth in G.L. c. 276, §§ 14–18.

§ 6.3B. BAIL

Although the Uniform Act is silent on the arrestee's right to bail after arrest on the governor's warrant (in contrast to the explicit right to bail after arrest on a fugitive complaint but before service of the governor's warrant), the Supreme Judicial Court has found authority for admitting these persons to bail in the general entitlement to bail contained in the Massachusetts habeas corpus statute.[51] The Court read the Uniform Act's exclusion from bail on a fugitive complaint of persons charged with crimes punishable by death or life imprisonment as also applying to bail for habeas corpus petitioners while they are challenging the validity of the governor's warrant and their arrest pursuant to it.[52]

§ 6.3C. CHALLENGING RENDITION

[44] G.L. c. 276, § 20B. A person arrested without warrant under these circumstances must be brought promptly before a court or justice, and a complaint must then be made against him or her under oath.

[45] G.L. c. 276, § 20C.

[46] G.L. c. 276, § 20D.

[47] G.L. c. 276, § 20E.

[48] G.L. c. 276, § 20J.

[49] G.L. c. 276, § 20J.

[50] *See* G.L. c. 276, §§ 20G & 20K, for provisions governing rendition of persons held in Massachusetts or of persons held in another state and demanded by Massachusetts authorities.

[51] Petition of Upton, 387 Mass. 359, 369-70 (1982), relying on G.L. c. 248, § 19.

[52] Petition of Upton, 387 Mass. 359 (1982).

Once the governor's warrant is served, § 19 requires that the arrestee be informed by a justice of the demand for the arrestee's surrender, of the crime charged, and of the arrestee's right to legal counsel. Any challenge to the validity of the arrest is properly made in the form of a petition for writ of habeas corpus,[53] which in Massachusetts should be filed in the superior court.

Once the governor of the asylum state issues a warrant authorizing the arrest and rendition of the accused, the only issues that a judge sitting on a petition for writ of habeas corpus may consider are:

> (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive.[54]

Although the protections of the Fourth Amendment entitling an arrestee to a prompt judicial determination of probable cause[55] apply to arrests under the Uniform Act, the extradition clause of the United States Constitution, article IV, section 2, clause 2, bars independent inquiries in the asylum state regarding probable cause where a "neutral judicial officer of the demanding state has determined that probable cause exists."[56]

The Supreme Court reaffirmed the extremely summary nature of interstate extradition proceedings in *New Mexico v. Reed*,[57] in which Reed, an Ohio parolee, was told by Ohio prison officials that they planned to revoke his parole status. He fled to New Mexico, and Ohio sought extradition. The New Mexico courts ruled that Reed was not a "fugitive" for purposes of extradition because he fled under duress derived from the belief that Ohio authorities would revoke his parole without due process and subject him to physical harm. He was ordered released. The U.S. Supreme Court reversed, however, noting that the State of Ohio was not a party to the New Mexico hearing, and holding, more significantly, that "this is simply not the kind of issue that may be tried in the asylum state." The Court reiterated that extradition proceedings should be "summary" and stated that the "obvious objective of the Extradition Clause is that no

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[53] G.L. c. 276, § 19. This section further lists the persons entitled to notice of the petition and of the hearing thereon. The Uniform Act also imposes criminal sanctions on any officer who delivers a person arrested on a governor's warrant to an agent of the demanding state in "willful disobedience" of the procedural protections of § 19.

[54] Michigan v. Doran, 439 U.S. 282, 289 (1978); A Juvenile, Petitioner, 396 Mass. 116, 120 (1985). Massachusetts courts do not have jurisdiction to dismiss another state's indictment even if it seems that that state has violated rendition or detainer procedural requirements. David Francis Gay, Petitioner, 406 Mass. 471, 476–77 (1990) (Massachusetts, sending state, does not have jurisdiction to rule on California's 180-day period violation). *See also* G.L. c. 276, § 20H (barring inquiring into guilt or innocence except as relevant to the petitioner's identity).

[55] *See* County of Riverside v. McLaughlin, 500 U.S. 44, 51 (1991); Gerstein v. Pugh, 420 U.S. 103, 114 (1975).

[56] Michigan v. Doran, 439 U.S. 282, 290 (1978). *See also* In re Doucette, 42 Mass. App. Ct. 310, 311 (1997); Quinones v. Commonwealth, 423 Mass. 1015, 1015 (1996) (no further judicial inquiry permitted once governor has acted on request for extradition based on judicial determination of probable cause by demanding state).

[57] 524 U.S. 151 (1998).

State should become a safe haven for the fugitives from a sister State's criminal justice system."[58]

In evaluating whether the extradition documents are in order on their face, the Supreme Judicial Court has taken the view that, where the extradition documents do not contain an explicit finding of probable cause, the habeas corpus court may properly consider whether the demanding state's criminal practice required a finding of probable cause before issuing the documents on which extradition is based.[59] If so, under the United States Constitution the Massachusetts court must accord a presumption of regularity to the proceedings in the demanding state.[60]

Technical defects in the complaint or other pleadings from the demanding state are arguably relevant to whether the habeas petitioner has been charged with a crime in the demanding state.[61] It is clear, however, that where multiple charges are involved, possible technical defects as to just one charge will not benefit the petitioner in the habeas proceeding.[62]

The respondent has the burden of proving that the petitioner is the person named in the extradition papers.[63] Proof that the names are identical, without more, does not meet the burden, but Massachusetts courts have not required much additional evidence to establish identity.[64]

The issuance of the governor's warrant is prima facie evidence that the petitioner is a fugitive.[65] Proof, however, that the petitioner was not in the demanding state at the time of the offense is pertinent to whether the petitioner is a fugitive and is a proper subject of proof at the hearing on the petition.[66] If a serious question of

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[58] New Mexico v. Reed, 524 U.S. 151, 151-55 (1998) (quoting California v. Superior Court, 482 U.S. 400, 405–06 (1987)).

[59] *See* Consalvi, Petitioner, 376 Mass. 699, 702 (1978) (holding that *Gerstein v. Pugh* is applicable to rendition proceedings and discharging habeas corpus petitioners where demanding state's requirements for issuance of arrest warrant did not satisfy Fourth Amendment's probable-cause standard and papers did not establish probable cause). *Accord* A Juvenile, Petitioner, 396 Mass. 116, 120–21 (1985) (petitioner not entitled to probable-cause hearing in Massachusetts where there was no showing that demanding state's arrest warrant procedure was deficient); Whitehouse, Petitioner, 18 Mass. App. Ct. 455, 458 (1984) (S.J.C. is bound by probable-cause finding in demanding state where state procedure allows issuance of warrant only on such finding, despite apparent inadequacies in affidavit supporting arrest warrant).

[60] A Juvenile, Petitioner, 396 Mass. 116, 120 (1985).

[61] *But see* Whitehouse, Petitioner, 18 Mass. App. Ct. 455, 459 (1984) (citing Petition of Upton, 387 Mass. 359, 362-63 (1982), and Munsey v. Clough, 196 U.S. 364, 373 (1905)).

[62] Whitehouse, Petitioner, 18 Mass. App. Ct. 455, 458-59 (1984); Petition of Upton, 387 Mass. 359, 363 (1982).

[63] A Juvenile, Petitioner, 396 Mass. 116, 121 (1985).

[64] *See, e.g.,* A Juvenile, Petitioner, 396 Mass. 116 (1985), and cases cited. The Uniform Act does not require the rendition request to include proof of identity, *see* G.L. c. 276, § 14, but extrinsic evidence of identity may be considered if the petitioner contests identity. *A Juvenile, Petitioner, supra,* 396 Mass. at 122.

[65] Petition of Upton, 387 Mass. 359, 365 (1982); Petition of Gay, 406 Mass. 471, 474 (1990).

[66] *See* Petition of Upton, 387 Mass. 359, 363 (1982). *But see* Vasquez, petitioner, 428 Mass. 842, 844 n.1 (1999) (upholding rendition despite fact that petitioner was never physically present in demanding state). G.L. c. 276, § 14, also requires the demand for rendition to allege that the person sought either was in the demanding state at the time of the offense or acted in

competency is raised by an alleged fugitive, due process and the statutory right to counsel require a specific determination by the court that the fugitive is sufficiently competent to comprehend the nature of rendition proceedings and to consult meaningfully with counsel.[67]

If the petition for writ of habeas corpus is denied and the state appellate courts affirm the denial, the petitioner may seek relief in the federal courts either on a petition for certiorari or on an application to the federal courts for a writ of habeas corpus.[68]

No Massachusetts statute grants the defendant credit for time spent fighting rendition. In cases involving credit to be given for time served elsewhere,"[w]here no statute controls, we have been establishing guiding principles, case by case . . . ."[69]Courts have sought to ground such decisions on principles of fairness and justice.[70] The Appeals Court has held that Massachusetts courts will generally only award pretrial custody jail time credits for time spent in a foreign jurisdiction after either: the date of signing an extradition waiver,[71] the date UCEA procedures are finalized and the defendant is delivered to the custody of Massachusetts authorities,[72] or the date the defendant's challenge to rendition is resolved.[73] An exception might be found, however, where a defendant is able to demonstrate inability to execute a waiver due to circumstances beyond his control. [74]

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another state to cause the crime in the demanding state, or has escaped or violated probation, parole, or bail in the demanding state.

[67] In re Hinnant, 424 Mass. 900, 906 (1997).

[68] *See* Fasano v. Hall, 615 F.2d 555, 557 (1st Cir.), *cert. denied,* 101 S. Ct. 201 (1980). The federal habeas corpus statute is found in 28 U.S.C. § 2241 et seq. and is discussed *infra* at § 44.5 (collateral attacks in the federal courts on state convictions).

[69] Commonwealth v. Beauchamp, 413 Mass. 60 (1992); Chalifoux v. Commissioner of Correction, 375 Mass. 424, 428 (1978).

[70] *See* Chalifoux, 375 Mass. at 428 (credit given for sentence served in California where Massachusetts unfairly declined to receive prisoner on transfer and then declined to credit him with time served on a sentence intended to be concurrent with his Massachusetts sentence, without so informing him).

[71] Commonwealth v. Frias, 53 Mass. App. Ct. 488, 494 (2002).

[72] *Id*. at 493 n.8. (citing G.L. c. 276 § 19).

[73] *Id*. *See also* Commonwealth v. Araujo, 41 Mass. App. Ct. 928, 929 (1996) (excluding jail credit for time spend contesting rendition, but crediting defendant for time spent in New York prison following resolution of rendition challenge).

[74] *See* Frias, 53 Mass. App. Ct. at 494 n. 9.