Michigan
Law Revision Commission

SIXTEENTH ANNUAL REPORT
1981

MICHIGAN
LAW REVISION COMMISSION

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MICHIGAN LAW REVISION COMMISSION
Sixteenth Annual Report to the Legislature

To the Members of the Michigan Legislature:

The Law Revision Commission hereby presents its sixteenth annual report pursuant to Section 14(e) of Act No. 412 of the Public Acts of 1965.

The Commission, created by Section 12 of that Act, consists of the chairperson and ranking minority members of the Committees on Judiciary of the Senate and House of Representatives, the Director of the Legislative Service Bureau, being the five ex-officio members, and four members appointed by the Legislative Council. Terms of appointed Commissioners are staggered. The Legislative Council designates the Chairman of the Commission.

The ex-officio members of the Commission during 1980 were Senator Basil W. Brown of Highland Park, Senator Donald E. Bishop of Rochester, Representative Perry Bullard of Ann Arbor, Representative Richard D. Fessler of Pontiac, and Elliott Smith, Director of the Legislative Service Bureau. The appointed members of the Commission were Tom Downs, Jason L. Honigman, David Lebenbom, and Richard C. Van Dusen. Jason L. Honigman was Chairman and Tom Downs was Vice Chairman of the Commission. Professor Jerold Israel of the University of Michigan Law School served as Executive Secretary.

The Commission is charged by statute with the following duties:

1. To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reform.

2. To receive and consider proposed changes in law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.

3. To receive and consider suggestions from justices, judges, legislators and other public officials, lawyers and the public generally as to defects and anachronisms in the law.

4. To recommend, from time to time, such changes in the law as it deems necessary in order to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state, civil and criminal, into harmony with modern conditions.

The problem to which the Commission directs its studies are largely identified by a study of statute and case law of Michigan and legal literature by the Commission members and the Executive Secretary. Other subjects are brought to the attention of the Commission by various organizations and individuals, including members of the Legislature.

The Commission's efforts during the past year have been devoted primarily to three areas. First, Commission members met with legislative committees to secure disposition of 15 proposals recommended by the Commission. Second, the Commission examined suggested legislation proposed by various groups involved in law revision activity. These proposals included legislation advanced by the Council of State Governments, the National Conference of Commissioners on Uniform State Laws, and the Law Revision Commissions of various jurisdictions within and without the United States (e.g., California, New York, and British Columbia).

Finally, the Commission considered various problems relating to special aspects of current Michigan law suggested by its own review of Michigan decisions and the recommendations of others.

As in previous years, the Commission studied various proposals that did not lead to legislative recommendations. In the case of several Uniform or Model Acts, we found that the subjects treated had been considered by the Michigan legislature in recent legislation. Similarly, various aspects of Michigan law were examined, but were viewed as inappropriate for legislative recommendation at this time. Two of the topics studied did lead to recommendations for legislative action. These are:

(1) Uniform Extradition and Rendition Act

(2) Disclosures in the Sale of Visual Art Objects Produced in Multiples

Recommendations and proposed statutes on the above topics accompany this report.

In addition to the new recommendations contained in this report, the Commission recommends favorable consideration of the following recommendations of past years upon which no final action was taken in 1981.

(1) Unlawful Assessments -- See Recommendations of 1976 Annual Report, page 44. Introduced as H.B. 5319 in 1979.

(2) Marital Agreements/Divorce Amendment -- See Recommendations of 1976 Annual Report, page 38. During the 1978 session, an earlier version of this proposal, S.B. 632, passed the Senate and was before the House Committee on Judiciary.

(3) Appeals to the Tax Tribunal -- H.B. 4069, before the House Committee on Taxation. See Recommendations of 1978 Annual Report, page 9.

(4) Commercial Mortgage Foreclosure Act -- H.B. 4058, before the House Committee on Corporation and Finance. See Recommendations of 1978 Annual Report, page 13.

(5) In Rem Jurisdiction by Attachment or Garnishment Before Judgment -- H.B. 4416. This bill was passed by the House in November 1981, and is now before the Senate Committee on Judiciary. See Recommendations of 1978 Annual Report, page 22.

(6) Disclosure of Treatment as an Element of the Psychologist/Psychiatrist-Patient Privilege -- See Recommendations of 1978 Annual Report, page 28. Introduced as H.B. 5297 in 1979.

(7) Elimination of various Statutory References to Abolished Courts -- H.B. 4498. This bill was passed by the House in November 1981, and is now before the Senate Committee on Judiciary. See Recommendations of the 1979 Annual Report, page 9.

(8) Uniform Federal Lien Registration Act -- H.B. 4415. This bill was passed by the House in November 1981, and is now before the Senate Committee on Judiciary. See Recommendations of the 1979 Annual Report, page 26.

(9) Technical Amendments to the Business Corporation Act -- S.B. 358, before the Senate Committee on Corporations and Economic Development. See Recommendations of the 1980 Annual Report, page 8.

(10) Revised Uniform Limited Partnership Act -- S.B. 30. This bill was passed by the Senate in October 1981, and is now before the House Committee on Corporations and Finance. See Recommendations of the 1980 Annual Report, page 40.

(11) Amendment of R.J.A. Section 308 (Court of Appeals Jurisdiction) in accordance with R.J.A. Section 861 -- H.B. 5223, before House Committee on Judiciary. See Recommendations of the 1980 Annual Report, page 34.

(12) Amendment of Probate Code Section 767 (Interest on Judgments) to conform to R.J.A. Section 6013 -- H.B. 5219, before House Committee on Judiciary. See Recommendations of the 1980 Annual Report, page 37.

(13) Amendment of Business Entity Exemption to Usury Laws -- See Recommendations of the 1980 Annual Report, page 31.

Topics on the current study agenda of the Commission are:

(1) Amendments to Article 8 -- Uniform Commercial Code
(2) Eliminating Statutory References to Justice of the Peace and Other Abolished Courts
(3) Revision of the Administrative Procedure Act
(4) Transfer of A Business Having Liquor Sales As A Minor Portion of Its Activities
(5) Product Liability, Model Acts
(6) Revisions of State Anti-Trust Laws
(7) Model Periodic Payment of Judgments Act
(8) Michigan Election Law -- Designation of Convention Delegates
(9) Granting and Withdrawal of Medical Practice Privileges in Hospitals

The Commission continues to operate with its sole staff member, the part-time Executive Secretary, whose offices are in the University of Michigan Law School, Ann Arbor, Michigan 48109. The use of consultants has made it possible to expedite a large volume of work and at the same time give the Commission the advantage of expert assistance at relatively low cost. Faculty members of the several law schools in Michigan continue to cooperate with the Commission in accepting specific research assignments.

The Legislative Service Bureau has generously assisted the Commission in the development of its legislative program. The Director of the Legislative Service Bureau, who acts as Secretary to the Commission, continutes to handle the fiscal operations of the Commission under procedures established by the Legislative Council.

The following Acts have been adopted to date pursuant to recommendations of the Commission and in some cases amendments thereto by the Legislature:

1967 Legislative Session

Subject	Commission Report	Act No.
Powers of Appointment	1966, p. 11	224
Interstate and International Judicial Procedures	1966, p. 25	178
Dead Man's Statute	1966, p. 29	263
Corporation Use of Assumed Names	1966, p. 36	138
Stockholder Action Without Meetings	1966, p. 41	201
Original Jurisdiction of Court of Appeals	1966, p. 43	65

1968 Legislative Session

Subject	Commission Report	Act No.
Jury Selection	1967, p. 23	326
Emancipation of Minors	1967, p. 50	293
Guardian ad Litem	1967, p. 53	292
Possibilities of Reverter and Right of Entry	1966, p. 22	13
Corporations as Partners	1966, p. 34	288
Stockholder Approval of Mortgaging Assets	1966, p. 39	287

1969 Legislative Session

Administrative Procedures Act	1967, p. 11	306
Access to Adjoining Property	1968, p. 21	55
Antenuptial Agreements	1968, p. 27	139
Notice of Tax Assessments	1968, p. 30	115
Anatomical Gifts	1968, p. 39	189
Recognition of Acknowledgments	1968, p. 61	57
Dead Man's Statute Amendment	1969, p. 29	63
Venue Act	1968, p. 19	333

1970 Legislative Session

Appeals from Probate Court Act	1968, p. 32	143
Land Contract Foreclosures	1967, p. 55	86
Artist-Art Dealer Relationships Act	1969, p. 44	90
Warranties in Sales of Art Act	1969, p. 47	121
Minor Students Capacity to Borrow Act	1969, p. 51	107
Circuit Court Commission Power of Magistrates Act	1969, p. 62	238

1971 Legislative Session

Revision of Grounds for Divorce	1970, p. 7	75
Civil Verdicts by 5 of 6 Jurors in Retained Municipal Courts	1970, p. 40	158
Amendment of Uniform Anatomical Gift Act	1970, p. 45	186

1972 Legislative Session

Business Corporation Act	1970, Supp.	284
Summary Proceedings for Possession of Premises	1970, p. 16	120
Interest on Judgments Act	1969, p. 64	135
Constitutional Amendment re Juries of 12	1969, p. 65	HJR "M"

1973 Legislative Session

Subject	Commission Report	Act No.
Technical Amendments to Business Corporation Act	1973, p. 8	98
Execution and Levy in Proceedings Supplementary to Judgment	1970, p. 51	96

1974 Legislative Session

Venue in Civil Actions Against Non-Resident Corporations	1971, p. 63	52
Model Choice of Forum Act	1972, p. 60	88
Extension of Personal Jurisdiction in Domestic Relations Cases	1972, p. 53	90
Technical Amendments to the General Corporations Act	1973, p. 38	140
Technical Amendments to the Revised Judicature Act	1971, p. 7	297
1974 Technical Amendments to the Business Corporation Act	1974, p. 30	303
Attachment Fees Act	1968, p. 23	306
Amendment of "Dead Man's" Statute	1972, p. 70	305
Contribution Among Joint Tort-feasors Act	1968, p. 57	318
District Court Venue in Civil Actions	1970, p. 42	319
Elimination of Pre-judgment Garnishment	1972, p. 7	371

1975 Legislative Session

Amendment of Hit-Run Provisions to Provide Specific Penalty	1973, p. 54	170
Uniform Child Custody Jurisdiction Act	1969, p. 22	297
Insurance Policy in Lieu of Bond Act	1972, p. 59	290
Uniform Disposition of Community Property Rights at Death Act	1973, p. 50	289
Equalization of Income Rights of Husband and Wife in Entirety Property	1974, p. 30	288

1976 Legislative Session

Due Process in Replevin Actions	1972, p. 7	79
Qualifications of Fiduciaries	1966, p. 32	262
Revision of Revised Judicature Act Venue Provisions	1975, p. 20	375
Durable Family Power of Attorney	1975, p. 18	376

1978 Legislative Session

Subject	Commission Report	Act No.
Elimination of References to Abolished Courts		
Preservation of Property Act	1976, p. 74	237
Bureau of Criminal Identification	1976, p. 74	538
Charter Townships	1976, p. 74	553
Fourth Class Cities	1976, p. 74	539
Election Law Amendments	1976, p. 74	540
Home Rule Cities	1976, p. 74	191
Home Rule Village Ordinances	1976, p. 74	190
Village Ordinances	1976, p. 74	189
Public Recreation Hall Licenses	1976, p. 74	138
Township By-Laws	1976, p. 74	103
Study Report on Juvenile Obscenity Law	1975, p.133	33
Multiple Party Deposits	1966, p. 18	53
Amendment of Telephone and Messenger Service Act Amendments	1973, p. 48	63
Amendments of the Plat Act	1976, p. 58	367
Amendments to Article 9 of the Uniform Commercial Code	1975, Special Supplement	369

1980 Legislative Session

Condemnation Procedures Act	1968, p. 11	87
Technical Revision of the Code of Criminal Procedure	1978, p. 37	506

1981 Legislative Session

Elimination of Reference to the Justice of the Peace: Provision on the Sheriff's Service of Process	1976, p. 74	148

The Commission continues to welcome suggestions for improvement of its program and proposals.

Respectfully submitted,

Jason L. Honigman, Chairman
Tom Downs, Vice Chairman
David Lebenbom
Richard C. Van Dusen

Ex-Officio Members
Sen. Basil W. Brown
Sen. Donald E. Bishop
Rep. Perry Bullard
Rep. Richard D. Fessler
Elliott Smith, Secretary

Date: December 31, 1981

RECOMMENDATION RE UNIFORM EXTRADITION AND RENDITION ACT

The Uniform Criminal Extradition Act (M.C.L. §§780.01 to 780.31) was adopted in Michigan in 1937. It is currently enacted in 49 states. In 1980, the National Conference of Commissioners on Uniform State Laws adopted the Uniform Extradition and Rendition Act as a replacement for the Uniform Criminal Extradition Act. The replacement provision was subsequently approved by the American Bar Association in 1981. The N.C.C.U.S.L.'s extensive commentary to the Uniform Extradition and Rendition Act is set forth in Appendix A at p. __ infra. That commentary contains a full discussion of the need for revision of the Uniform Criminal Extradition Act (originally promulgated in 1926) and the various changes adopted in response to that need.

It should be noted initially that many of the new provisions merely codify interpretations of the current act that have been adopted by Michigan courts. This is true, for example, of the requirement that the retrieval process be initiated by a finding of probable cause in the demanding state. See In the Matter of Doran, 401 Mich. 235 (1977), reversed on other grounds in Michigan v. Doran, 439 U.S. 282 (1978). The two primary innovations are the provision of a judicial hearing as a replacement for the usual habeas corpus challenge to extradition and the creation of a rendition alternative to the extradition process. The use of a judicial extradition hearing, as noted in the N.C.C.U.S.L.

commentary, follows the pattern adopted in related Uniform Acts that have been enacted in Michigan. It should also be noted that Michigan General Court Rule 712, dealing with habeas proceedings, is not restricted to the extradition setting and therefore is procedurally cumbersome as compared to the hearing provided in the N.C.C.U.S.L. proposal. The provision for a rendition alternative is, perhaps, the most innovative aspect of the N.C.C.U.S.L. proposal as applied to most jurisdictions. It would not constitute a major innovation in Michigan, however, since Michigan is one of 8 states that have adopted the Uniform Rendition of Accused Persons Act. See M.C.L. §§780.41 to 780.45. While the rendition procedure provided in the Uniform Extradition and Rendition Act is more extensive, the Act ensures that the use of rendition procedures, in lieu of extradition, is subject to the veto of the Governor.

The proposed bill largely tracks the language of the Uniform Act. Certain stylistic changes have been made to conform with the traditional style of Michigan legislation. In addition, two definitions have been added. The "prosecuting official" referred to in the Uniform Act often may be either the Attorney General or the county prosecutor. Also, the reference should encompass the assistants in those offices as well as the officials themselves. Accordingly, a special definition of "prosecuting attorney" has been added, which follows the definition in the Code of Criminal Procedure, M.C.L. §761.1(ℓ), and includes the Attorney General, the Deputy Attorney General, the county prosecutor, assistant prosecutors and assistant attorneys general.

The Uniform Act leaves to the state the task of designating that level of the judiciary that will be granted judicial authority under the Act. The current Michigan version of the Extradition Act authorizes the issuance of warrants and orders by "a judge or magistrate." This provision was adopted prior to the reorganization of the lower courts. Under the current court structure, the replacement for the magistrate would be the judge of the district court or the municipal court. However, in certain instances, a judge of the circuit court or the recorder's court might also exercise the authority of a magistrate. The district court magistrate arguably could also be included under the current provision; M.C.L. §600.8511 grants district court magistrates general authority to issue arrest warrants and this might include warrants issued in the extradition setting. However, in light of the limited authority of the district court magistrates with respect to other preliminary functions relating to felonies, granting them authority to hold a judicial rendition hearing, as provided in the proposed act, arguably would be inconsistent with the current use of magistrates. To avoid confusion on this score, a definition of "magistrate" is added which specifically includes district court judges, municipal judges, and circuit court and recorder's court judges acting as magistrates, but excludes district court magistrates.

The proposed bill follows:

UNIFORM EXTRADITION AND RENDITION ACT

A bill to enact the Uniform Extradition and Rendition Act and to repeal the Uniform Criminal Extradition Act and the Uniform Rendition of Accused Persons Act.

Chapter I

Sec. 1. As used in this Act:

(a) "Arrest warrant" means any document that authorizes a peace officer to take custody of a person.

(b) "Certified copy" means a copy of a document accompanied by a statement of a custodian authorized by the law of a state to maintain the document, stating that the copy is a complete and true copy of an official record filed and maintained in a public office.

(c) "Demanded person" means a person whose return to a demanding state is sought from another state by extradition under chapter III.

(d) "Demanding state" means a state that is seeking the return of a person from another state through the process of extradition under chapter III.

(e) "Executive authority" means the Chief Executive in a state other than this State, any person performing the functions of Chief Executive, or a representative designated by the Chief Executive.

(f) "Governor" means the Governor of this State, any person performing the functions of Governor or a representative designated by the Governor.

(g) "Issuing authority" means any person who may issue or authorize the issuance of an arrest warrant.

(h) "Magistrate" means (i) a judge of the district court, (ii) a judge of a municipal court, or (iii) a judge of the recorder's court of the city of Detroit or the circuit court who is exercising the authority of a magistrate as provided for in the Code of Criminal Procedure. "Magistrate" does not include a district court magistrate.

(i) "Prosecuting attorney" means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, or an assistant attorney general.

(j) "Requested person" means a person whose return to a requesting state is sought from another state by rendition under chapter IV.

(k) "Requesting state" means a state that is seeking the return of a person from another state through the process of rendition under chapter IV.

(l) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession subject to the legislative authority of the United States.

Sec. 2. The law of pretrial release of this State, as set forth in the Constitution, the Code of Criminal Procedure, and court rules prescribed by the Supreme Court, shall govern the release of persons pursuant to section 3 of chapter II, section 6 of chapter III, section 5 of chapter IV and section 1 of chapter V.

Sec. 3. This Act and proceedings under it are not exclusive and do not affect the authority of this State to do any of the following:

(a) Try a demanded or requested person for a crime committed within this State.

(b) Take custody of a demanded or requested person by extradition or rendition proceedings for the purpose of trial, sentence, or punishment for a crime committed within this State.

(c) Take custody of a person under other provisions of law, including interstate agreements.

(d) Release a person from custody upon any valid conditions.

Chapter II

Sec. 1(1). A peace officer may arrest a person without an arrest warrant upon probable cause to believe that the person is the subject of another state's arrest warrant issued for (i) commission of a crime punishable by death or imprisonment for a term exceeding one year, (ii) escape from confinement, or (iii) violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding.

(2) The arrested person must be brought forthwith before a magistrate of the judicial district in which the arrest was made.

(3) The magistrate shall issue an order to continue custody or other process to assure the appearance of the person, if testimony or affidavit shows probable cause to believe the person is the subject of another state's arrest warrant issued for (i) the commission of a crime punishable by death or imprisonment for a term exceeding one year, (ii) escape from confinement, or (iii) violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding.

Sec. 2(1). Upon application of a prosecuting attorney, a magistrate shall authorize the issuance of an arrest warrant or summons to obtain the appearance of a person, if testimony or affidavit shows probable cause to believe each of the following:

(a) The person is in this State.

(b) The person is the subject of another state's arrest warrant issued for (i) the commission of a crime punishable by death or imprisonment for a term exceeding one year, (ii) escape from confinement, or (iii) violation of any term of bail, probation, parole, or order arising out of a criminal proceeding.

(2) A summons issued pursuant to subsection (1) must require the appearance of the person before a magistrate of the judicial district in which the summons was issued.

(3) An arrest warrant issued pursuant to subsection (1) must require that the person be brought forthwith before a magistrate of the judicial district in which the warrant was issued.

Sec. 3(1). The magistrate shall inform the person appearing pursuant to sections 1 or 2 of this chapter of each of the following:

(a) The name of the other state that has subjected the person to an arrest.

(b) The basis for the arrest warrant in the other state.

(c) The right to assistance of counsel.

(d) The right to require a judicial hearing under this Act before transfer of custody to the other state.

(2) After being informed by the magistrate of the effect of a waiver, the person may waive the right to require a judicial hearing under this Act and consent to return to the other state by executing a written waiver in the presence of the magistrate. If the waiver is executed, the magistrate shall issue an order to transfer custody pursuant to section 1 of chapter V or, with the consent of the official upon whose application the arrest warrant was issued in the other state, authorize the voluntary return of the person to that state.

(3) Unless a waiver is executed pursuant to subsection (2), the magistrate shall (i) release the person upon conditions that will reasonably assure availability of the person for arrest pursuant to section 5 of chapter III or section 4 of chapter IV, or (ii) direct a law enforcement officer to maintain custody of the person. Subject to section 4 of this chapter, the period of conditional release or custody may not exceed 30 days.

Sec. 4(1). If the person is not subsequently arrested or served with a summons, pursuant to section 5 of chapter III or section 4 of chapter IV, within the period specified in the arrest warrant or summons, the magistrate for good cause may issue further orders under section 3(3) of this chapter for additional periods not exceeding a total of 60 days. Further extensions of orders may be requested by the person under section 3(3) of this chapter.

(2) If the person is not subsequently arrested or served with a summons, pursuant to section 5 of chapter III or section 4 of chapter IV, within the time specified by the warrant or summons or the extension granted by the magistrate pursuant to subsection (1), the person may not be subjected to any further order in this State under section 3(3) of this chapter. If the person is subsequently arrested or served with a summons in this State under sections 1 or 2 of this chapter on the basis of the same arrest warrant of the other state, the person may not be subjected to the issuance of orders under section 3(3) of this chapter and must be released from custody. However, the person may be subject thereafter to a warrant or summons issued pursuant to section 5 of chapter III or section 4 of chapter IV.

Chapter III

Sec. 1(1). The Governor may recognize a written demand by an executive authority for the extradition of a person, alleging either of the following:

(a) That the person is charged with a crime in the demanding state.

(b) That the person, having been charged with or convicted of a crime in the demanding state has (i) escaped from confinement or (ii) violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the demanding state.

(2) The Governor may demand the extradition of a person from another state in accordance with the Constitution of the United States and may comply with the requirements of the other state for recognition of a demand.

Sec. 2. The demand for extradition must be accompanied by a certified copy of an arrest warrant and one of the following:

(a) A statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that a crime has been committed and the demanded person committed the crime, together with a copy of the provisions of law defining the crime and fixing the penalty therefor.

(b) A certified copy of the indictment upon which the arrest warrant is based.

(c) A statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that the demanded person has violated any term of bail, probation, or an order arising out of a criminal proceeding.

(d) A certified copy of a judgment of conviction or a sentencing order accompanied by a statement by the issuing authority that the demanded person has escaped from confinement or violated any term of parole.

Sec. 3. The Governor may do any or all of the following:

(a) Investigate the demand for extradition and the circumstances of the demanded person.

(b) Request the Attorney General or any other prosecuting attorney to investigate.

(c) Hold a hearing.

Sec. 4(1). If a demanded person is being prosecuted, is imprisoned, is on parole or probation, or is subject to an order arising out of a criminal proceeding, in this State, the Governor may do any of the following:

(a) Grant extradition.

(b) Delay action.

(c) Agree with the executive authority of the demanding state to grant extradition upon conditions.

(2) The Governor may agree with an executive authority of another state for the extradition to this State of a person who is being prosecuted, is imprisoned, is on parole or probation, or is subject to an order arising out of a criminal proceeding, in that state, upon conditions prescribed by the agreement.

Sec. 5(1). If the Governor decides to comply with the demand for extradition, he shall issue a warrant for the arrest and extradition of the demanded person. The Governor's warrant must recite the name of the state demanding extradition and the crime charged or other basis for the demand.

(2) The Governor may specify the time and manner in which the warrant is executed.

(3) At any time before the transfer of custody of the demanded person to the agent of the demanding state, the Governor may recall the warrant or issue another warrant.

(4) The warrant must be directed to any law enforcement officer and require compliance with section 6 of this chapter.

(5) The law relating to assistance in the execution of other arrest warrants in this State applies to the execution of the Governor's warrant.

Sec. 6(1). A person arrested under a Governor's warrant must be brought forthwith before a magistrate of the judicial district in which the arrest was made. The magistrate shall receive the warrant and inform the person of each of the following:

(a) The name of the state demanding extradition.

(b) The crime charged or other basis for the demand.

(c) The right to assistance of counsel.

(d) The right to a judicial hearing under section 7 of this chapter.

(2) After being informed by the magistrate of the effect of a waiver, the demanded person may waive the right to a judicial hearing and consent to return to the demanding state by executing a written waiver in the presence of the magistrate. If the waiver is executed, the magistrate shall issue an order to transfer custody pursuant to section 1 of chapter V or, with the consent of the executive authority of the demanding state, authorize the voluntary return of the person.

(3) If a hearing is not waived, the magistrate shall hold it within 10 days after the appearance. The demanded person and the prosecuting attorney of the county in which the hearing is to be held must be informed of the time and the place of the hearing. The magistrate shall (i) release the person upon conditions that will reasonably assure availability of the person for the hearing, or (ii) direct a law enforcement officer to maintain custody of the person.

Sec. 7(1). If the magistrate, after hearing, finds that the Governor has issued a warrant supported by the documentation required by sections 1(1) and 2 of this chapter, the magistrate shall issue an order to transfer custody pursuant to section 1 of chapter V, unless the arrested person establishes by clear and convincing evidence that he is not the demanded person.

(2) If the magistrate does not order transfer of custody, the magistrate shall order the arrested person to be released. If the agent of the demanding state has not taken custody within the time specified in the order to transfer custody, the demanded person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant or summons is issued as a result of a new demand for extradition or a new request for rendition.

(3) An order to transfer custody is not appealable.

(4) An order denying transfer is appealable.

Chapter IV

Sec. 1(1). Subject to subsections (2) and (3), this State may grant a written request by an issuing authority of another state for the rendition of a person in this State.

(2) The request must be refused if the requested person is any of the following:

(a) A person who is being prosecuted or is imprisoned in this State for a criminal offense.

(b) A person who is the subject of a pending proceeding in a juvenile court of this State brought for the purpose of adjudicating the person to be delinquent child.

(c) A person who is in the custody of an agency of this State pursuant to an order of disposition of a juvenile court of this State as a delinquent child.

(3) The request must allege either of the following:

(a) That the requested person is charged with a crime punishable in the requesting state by death or imprisonment for a term exceeding one year in the requesting state.

(b) That the requested person, having been charged with or convicted of a crime in the requesting state, has escaped from confinement or violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the requesting state.

(4) Upon application of a prosecuting attorney of this State, an issuing authority may request rendition of a person from another state and may comply with requirements of that state for the granting of the request. A correction official who is also an issuing authority may request rendition from another state of a person described in subsection (3)(b) and subject to the jurisdiction of the correction official.

Sec. 2. The request for rendition must be accompanied by a certified copy of the arrest warrant and one of the following:

(a) A statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that a crime has been committed and the requested person committed the crime, together with a copy of the provisions of law defining the crime and fixing the penalty therefor.

(b) A certified copy of the indictment upon which the arrest warrant is based,

(c) A statement by the issuing authority that the warrant was issued after a determination of probable cause to believe that the requested person has violated any term of bail, probation, or an order arising out of a criminal proceeding.

(d) A certified copy of a judgment of conviction or a sentencing order accompanied by a statement by the issuing authority that the requested person has escaped from confinement or violated any term of parole.

Sec. 3. A request for rendition under section 1 of this chapter must be filed with an office of this State designated by the Governor for the receipt of such requests, which office shall forward the request to the proper prosecuting attorney of this State. The Governor by written order may terminate the use of rendition at any time before the issuance of an order to transfer custody.

Sec. 4. Upon receipt of a request under section 3 of this chapter, the prosecuting attorney shall apply to a magistrate for the issuance of an arrest warrant or summons to obtain the appearance of the requested person. If the magistrate finds that the provisions of sections 1 and 2 of this chapter have been compiled with, he shall issue the warrant or summons. The warrant must require that the person be brought forthwith before a magistrate of the judicial district in which the warrant was issued. The summons must require the appearance of the person before a magistrate of the judicial district in which the summons was issued.

Sec. 5(1). The magistrate shall inform the person appearing pursuant to section 4 of this chapter of each of the following:

(a) The name of the state requesting rendition.

(b) The basis for the arrest warrant in the other state.

(c) The right to assistance of counsel.

(d) The right to a judicial hearing under section 6 of this chapter.

(2) After being informed by the magistrate of the effect of a waiver, the requested person may waive the right to a judicial hearing and consent to return to the requesting state by executing a written waiver in the presence of the magistrate. If the waiver is executed, the magistrate shall issue an order to transfer custody pursuant to section 1 of chapter V or, with the consent of the official upon whose application the request was issued, authorize the voluntary return of the person.

(3) If a hearing is not waived, the magistrate shall hold it within 10 days after the appearance. The requested person and the prosecuting attorney of the county in which the hearing is to be held must be informed of the time and place of the hearing. The magistrate shall (i) release the person upon conditions that will reasonably assure availability of the person for the hearing, or (ii) direct a law enforcement officer to maintain custody of the person.

Sec. 6(1). If the magistrate, after hearing, finds that sections 1 and 2 of this chapter have been complied with, the magistrate shall issue an order to transfer custody pursuant to section 1 of chapter V, unless the person establishes by clear and convincing evidence that he is not the requested person.

(2) If the magistrate does not order transfer of custody, the magistrate shall order the arrested person to be released. If the agent of the requesting state has not taken custody within the time specified in the order to transfer custody, the requested person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant or summons is issued as a result of a new demand for extradition or a new request for rendition.

(3) An order to transfer custody is not appealable.

(4) An order denying transfer is appealable.

Chapter V

Sec. 1(1). Except as provided in subsection (2), a judicial order to transfer custody issued pursuant to section 3 of chapter II, sections 6 or 7 of chapter III, or sections 5 or 6 of chapter IV, must direct a law enforcement officer to take or retain custody of the person until an agent of the other state is available to take custody. If the agent of the other state has not taken custody within 10 days, the magistrate may (i) order the release of the person upon conditions that will assure the person's availability on a specified date within 30 days, or (ii) extend the original order for an additional 10 days upon good cause shown for the failure of an agent of the other state to take custody.

(2) If the agent of the other state has not taken custody within the time specified in the order, the person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant or summons is issued as a result of a new demand for extradition or a new request for rendition.

(3) The magistrate in the order may authorize the voluntary return of the person with consent of the executive authority or with the consent of the official upon whose application the request for rendition was made.

Sec. 2. An agent who has custody of a person pursuant to an order to transfer custody issued in any state may request confinement of the person in any detention facility in this State while transporting him

pursuant to the order. Upon production of proper identification of the agent and a copy of the order, the detention facility shall confine the person for that agent. The person is not entitled to another extradition or rendition proceeding in this State.

Sec. 3. Unless the states otherwise agree, the state to which the person is being returned shall pay the cost of returning the person incurred after transfer of custody to its agent.

Sec. 4(1). A person returned to this State is subject to the law of this State as well as the provisions of law that constituted the basis for the return.

(2) This Act does not limit the powers, rights, or duties of the officials of a demanding, or requesting, state or of this State.

Sec. 5. If a person returned to this State is found not to have violated the law that constituted the basis for the return, the magistrate may order the county to pay the person the cost of transportation and subsistence to either (i) the place of the person's initial arrest, or (ii) the person's residence.

Sec. 6. This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

Sec. 7. This Act may be cited as the Uniform Extradition and Rendition Act.

Sec. 8. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Sec. 9. Act No. 144 of the Public Acts of 1937, being sections 780.1 to 780.31 of the Compiled Laws of 1970, and Act No. 281 of the Public Acts of 1968, being sections 780.41 to 780.45 of the Compiled Laws of 1970, are repealed.

Appendix A

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

UNIFORM EXTRADITION AND RENDITION ACT (1980)

Approved by the American Bar Association
Houston, Texas, February 10, 1981

PREFATORY NOTE

This is the first opportunity for the Conference to examine the Uniform Criminal Extradition Act promulgated in 1926. The strong rationale in favor of uniformity in state law governing interstate retrieval of fugitives led 27 states to adopt the Act by 1939 and 12 more to do so by 1951. Presently, fifty-one states and territories of the United States have adopted the Act or a variation of it. (See 11 U.L.A. Crim. Law and Proc. (Master ed., cum. annual pocket part 1980)).

Concerns about the Act began to surface within the past two decades and these concerns centered upon the proposition that the Act had become too cumbersome in its operation. These concerns have been publicly expressed by officials who are centrally involved in the operation of the Act, such as the governors and the attorneys general of the states. (See, *Policy Positions of the National Governors' Conference*, Policy A-12 at p. 10 (June 1973); and *Report on the Office of the Attorney General*, p. 332, National Association of Attorneys General, Raleigh, North Carolina, (February 1971).) Critics observed that, under the Act, action must occur by at least 9 agencies from the asylum and demanding states before the wanted person is available for the first step in the criminal justice process in the demanding state.[1] Many of these agencies have no interest or only a minimal interest in the prosecution underlying the retrieval. The critics conclude that the Act is unnecessarily cumbersome because its requirements exceed the needs of interstate harmony and of protection to individuals from mistaken or improvident retrievals.

The Act has become cumbersome because of social changes that have occurred subsequent to the extensive adoption of the Act by the states, including demographic changes, technological changes in police information systems, and the increased opportunities for mobility. Pressure for change in the Act continue to mount because of the following factors:

[1]These nine agencies include: (1) police in asylum state, Uniform Criminal Extradition Act §§14 and 15 (hereinafter referred to as "Act"); (2) magistrate or judge in asylum state, §§13 and 15 Act; (3) prosecutor in demanding state, § 23 Act; (4) attorney general in demanding state (The attorney general by practice advises the governor on the adequacy of the prosecutor's request to extradite a person from another state. See Kansas Governor's Extradition Manual (1972), p. 5); (5) governor in demanding state, §3 Act; (6) secretary of state in demanding state (attestation of demanding state's documents; see Kansas Governor's Extradition Manual (1972), p. 5); (7) attorney general of asylum state, §4 Act; (8) governor of asylum state, §7 Act; (9) judge of asylum state, §10 Act.

1. Integration of fugitive retrieval with ordinary police patrol resulting from technological changes in police information systems.

2. Increase in the percentage of the nation's population that live in socially and economically integrated areas that are intersected by state lines.

3. Disharmony among the states in interpreting the Act, e.g., whether the demanding documents should manifest probable cause, thereby, seriously weakening the uniformity of extradition procedures. (See Comment to Sections 3-101 and 3-102 for a discussion of this conflict in state interpretation of the Act.)

4. Social advantages of decreasing the dependency by states upon professional bondsmen by modernizing extradition procedures, thereby enhancing the capability of official state agencies to effectuate fugitive retrievals.

Recent technological changes in police information systems have two characteristics: (1) the advent, since 1967, of a network of connected state, regional, and national computerized data bases on persons subject to arrest warrants, and (2) the ability to equip police on automobile or foot patrol with mobile terminals that provide direct electronic access to computerized data bases on wanted persons.

A study by the federal government in 1972 located 101 discrete automated information systems that served police agencies with computerized data bases on wanted persons. (*Directory of Automated Criminal Justice Information Systems*, (U.S. Dept. of Justice, LEAA, 1972).) There has been a decided shift from the early emphasis on computer applications for crime statistics reporting and crime record keeping to rapid retrieval of information for patrol officers, particularly information on wanted persons. (K. Colton, *The Use of Computers By Police: Patterns of Successes and Failures*, International Symposium on Criminal Justice Information and Statistics Systems, p. 139 (Project Search, October 1972).) This development reflects an earlier soothsaying study by the American Telephone and Telegraph Co. in 1966 that predicted widespread police use of computers relating to wanted persons in the 1970-75 period. (*Law Enforcement Communications, 1970-75, A Long Range Study* (A.T. & T. Co., July 1966, IACP Library).)

Associated with the computerization of wanted persons files has been the development of vehicle-installed terminals that provide patrol officers with direct electronic access to the computerized files on wanted persons. Currently, there are approximately 1000 operational mobile digital terminals that have been installed in police patrol vehicles. (*State Criminal Justice Telecommunications Analysis*, p. 5-30 (Jet Propulsion Laboratory, Calif. Inst. of Tech., June

1977).) Earlier studies projected police adoption of mobile digital terminals for half of the 75,000 police patrol units by 1983. (*Nat'l. Crim. Just. Communications Requirements*, n. 47 at 6-29 (Jet Propulsion Laboratory, Calif. Inst. of Tech., June 28, 1974).) These studies have been somewhat tempered by the cost of the in-car terminals, but planners continue to agree that large municipal police departments will find that mobile digital terminals are cost effective and will equip their police cars with them. (*State Criminal Justice Telecommunications Analysis*, p. 5-30 (Jet Propulsion Laboratory, Calif. Inst. of Tech., June 1977).)

Computerized files on wanted persons, interconnected regionally and nationally and directly accessible to patrol police, will greatly enlarge the geographical range of police information on wanted persons. Studies have already established the increasing police dependency upon these technological changes in information systems about wanted persons. (See J. Murphy, *Arrest By Police Computer*, 1-10 (Lexington Books 1976).) Pressure on the cumbersome extradition procedure will continue to mount as police increase their activities in retrieval of wanted persons across state lines.

Technological changes in police information systems are by no means the only source of pressure upon the extradition process. Substantial demographic changes have occurred since the Act was promulgated in 1926 and adopted by most of the states nearly three decades ago. Approximately 25% of the nation's population now live in socially and economically integrated areas that spread across state lines. (J. Murphy, *Arrest by Police Computer*, Appendix, Population Centers Crossing State Borders, pp. 89-90 (Lexington Books 1976).) In these metropolitan areas, a substantial number of retrievals are for a short distance, albeit across state borders.[2] Each state border, however, marks the territorial limitation on the execution of the state's policy on criminal justice expressed in its criminal and penal statutes. Without a less cumbersome process for retrieving persons indispensable to a state's policy on justice, and consistent with civil liberties, the state's policy in criminal justice is frustrated.

One positive reason for examining the Criminal Extradition Act is the possibility of decreasing the dependency by states upon professional bondsmen. Since 1963, significant gains have been made in

[2]In 1973 the Washington, D.C., police had 1,064 requests from states for extradition of fugitives; 846 were from Virginia and Maryland counties that comprise the Washington, D.C., metropolitan area. (Statistics supplied by Lieutenant Glenn Ramey, Fugitive Unit, Metropolitan Police Department, Washington, D.C.) Sixty percent of extradition requests received by Johnson County, Kansas, are from police in Kansas City, Missouri, a distance of ten miles. (Telephone interview with J. Marques, Assistant District Attorney, Johnson County, Kansas, July 11, 1974.)

bail reform by the states and congress in increasing non-monetary forms of bail. Although many of the changes in bail were designed specifically to eliminate bondsmen, who are known in bail lore as fugitive hunters, there has been little analysis of the retrieval of fugitives who fail to appear after bail release. Matched against the official system of fugitive retrieval under the Uniform Criminal Extradition Act is the system of bondsmen with more legal power to retrieve fugitives than either federal or state police. Unless the official retrieval system is examined and improved, there is a risk that current bail reform efforts will be retarded, and the danger of reversion to a system dependent upon bondsmen will increase. Revision of the extradition process for more efficiency without loss of civil liberties will encourage the final replacement of bondsmen with police in fugitive retrieval—a socially desirable goal. (See, W. Thomas, *Bail Reform in America*, pp. 254-256 (Univ. of California Press 1976); J. Murphy, *Arrest by Police Computer*, pp. 35-46 (Lexington Books 1976).)

The Uniform Extradition and Rendition Act is structured to present a choice to the states in the procedure to be used for the retrieval of wanted persons found in another state. A state has a choice of extradition in Article III, which follows the procedures formerly set forth in the Uniform Criminal Extradition Act. Alternatively, the state may choose the less cumbersome procedure of rendition in Article IV. Both the rendition and extradition procedures are supplemented by the provisions found in Articles II and V that set forth the rules governing transfer and proceedings prior to extradition and rendition.

Both the extradition and rendition procedures set forth in this Act reflect three basic policy decisions of the Committee bearing upon the process of fugitive retrieval. First, the historic role of the governor in the process of fugitive retrieval has been retained. In the extradition process set forth in Article III, demands for the return of fugitives continue to be issued by the governor of the demanding state, and arrest warrants continue to be issued by the governor of the asylum state. The rendition process set forth in Article IV is more expeditious than extradition, but the rendition process is subject to the right on the part of the governor of the asylum state to terminate the use of rendition procedure at any time prior to the execution of an order to transfer custody.

Second, it was decided that all demands or requests for the retrieval of a fugitive, either under the extradition or rendition procedures, must include a certified copy of an arrest warrant issued after a determination of probable cause. This requirement will resolve two conflicts that have appeared in the cases interpreting the

Uniform Criminal Extradition Act. By this requirement, the retrieval process must be initiated by a finding of probable cause. Furthermore, the probable cause determination will be made by the demanding or requesting state, not by the asylum state. The forums of the asylum state will be entitled to rely on the representations of a person authorized to issue arrest warrants in the demanding or requesting state that an arrest warrant has been issued for the fugitive after a determination of probable cause. This structure will reflect the Supreme Court's recent interpretation of the provision on extradition found in the Constitution, Article IV, Section 2. "Under Article III, Section 2, the courts of the asylum state are bound to accept the demanding state's judicial determination since the proceedings of the demanding state are clothed with the traditional presumption of regularity. In short, when a judicial officer of the demanding state has determined that probable cause exists, the courts of the asylum state are without power to review the determination." *Michigan v. Doran*, 47 L. W. 4067, 4069. (See Comment to Sections 3-101 and 3-102 for an extensive discussion of the requirement of the finding of probable cause in the demanding or requesting state.)

The third major policy decision that is reflected in the Extradition and Rendition Act is the establishment of a new right to a judicial extradition hearing to contest the arrest under the governor's warrant during the extradition procedure set forth in Article III. Under the Uniform Criminal Extradition Act, the ordinary method of challenge is by application for the extraordinary writ of habeas corpus. The idea of a judicial hearing prior to transfer is also included in the more summary process of rendition in Article IV—the procedure proposed as an alternative to extradition.

There are two reasons to support the decision to establish a judicial extradition hearing, rather than a writ of habeas corpus, as the method to test an extradition arrest. First is the impropriety of using an extraordinary writ as the statutorily mandated method to challenge confinement during the operation of the ordinary procedures of the statute. None of the other compacts or uniform acts that bear on the transfer of persons across state lines for the administration of criminal justice utilize the extraordinary writ of habeas corpus as the statutorily mandated method of challenging confinement. Rather, many of these acts or compacts set forth a hearing on issues that reflects the operation of the particular act or compact. (See, e.g., Section 2 of the Uniform Act To Secure the Attendance of Witnesses, and Section 2 and 3 of the Uniform Rendition of Accused Persons Act.) An additional reason for establishing a judicial extradition hearing is the opportunity to define the issues to be presented

at the hearing—an opportunity which is not available with the writ of habeas corpus. The Extradition and Rendition Act defines the issues that can be raised at the hearing, and these issues reflect the operation of the proposed Act.

Thirdly, the opportunity for an ordinary judicial hearing, albeit subject to waiver, prior to transfer by extradition in Article III and rendition in Article IV answers the current constitutional objections to interstate transfers without pre-transfer hearings. These objections have been raised to interstate transfers of prisoners without hearings under the Interstate Agreement on Detainers. *Sisbarro v. Warden*, 592 F.2d 1 (1st Cir. 1979); *Atkinson v. Hanberry*, 589 F.2d 917 (5th Cir. 1979); *Cuyler v. Adams*, 592 F.2d 720 (3rd Cir. 1979, cert. granted Feb. 19, 1980). In all of these cases the courts reasoned that a prisoner's constitutionally protected "liberty" interest was not breached by an interstate transfer without an opportunity for a hearing. For cases to the contrary, see e.g., *Moen v. Wilson*, 536 P.2d 1129 (Colo. 1975). By contrast, most of the persons subject to the extradition or rendition process under this Act would not be imprisoned. A sufficient "liberty" interest would, presumably, be present to challenge a transfer without the opportunity for a hearing. Therefore, an opportunity for a pre-transfer hearing is available to a person whose custody is sought by extradition or rendition.

UNIFORM EXTRADITION AND RENDITION ACT (1980)

ARTICLE I
GENERAL PROVISIONS

§1-101. [*Definitions.*] As used in this Act:

(1) "Arrest warrant" means any document that authorizes a peace officer to take custody of a person.

(2) "Certified copy" means a copy of a document accompanied by a statement of a custodian authorized by the law of a state to maintain the document that the copy is a complete and true copy of an official record filed and maintained in a public office.

(3) "Demanded person" means a person whose return to a demanding state is sought from another state by extradition under Article III.

(4) "Demanding state" means a state that is seeking the return of a person from another state through the process of extradition under Article III.

(5) "Executive authority" means the Chief Executive in a state other than this State, any person performing the functions of Chief Executive, or a representative designated by the Chief Executive.

(6) "Governor" means the Governor of this State, any person performing the functions of Governor or a representative designated by the Governor.

(7) "Issuing authority" means any person who may issue or authorize the issuance of an arrest warrant.

(8) "Requested person" means a person whose return to a requesting state is sought from another state by rendition under Article IV.

(9) "Requesting state" means a state that is seeking the return of a person from another state through the process of rendition under Article IV.

(10) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession subject to the legislative authority of the United States.

COMMENT

Paragraph (2) purposely does not require that the statement of the custodian be verified or authenticated. The definition is consistent with Rules 901 and 902 of the Uniform Rules of Evidence.

Paragraph (6) would include the successorship in the event of death of a Governor, the Governor who is absent and another member of the state's government performs the executive functions of Governor, and also the commonly occurring situation of

the Governor designating a particular person to do extradition work. The District of Columbia, as an enacting jurisdiction, may have to use the word "Chief Judge" instead of Governor because the District of Columbia does not have a Governor.

Paragraph (7) envisions the issuance of an arrest warrant by judicial officers, or, in the case of parole, probation violators or escapees, by other impartial officers who may issue arrest warrants consistent with the Fourteenth Amendment. See Article III, §3-102(3) and (4); Article IV, §§4-101(d) and 4-102(3) and (4). See, also, *Morrissey v. Brewer*, 92 S. Ct. 2593 (1972) and *Gagnon v. Scarpelli*, 93 S. Ct. 1756 (1973).

Paragraph (10) of this section includes the District of Columbia. The District was not included in the definition of state in the Uniform Criminal Extradition Act, and, as a result, extraditions among the states and the District of Columbia are governed by a separate extradition statute. 23 D.C. Code §701 *et seq.*, and the federal extradition statute, 18 U.S.C. §3182 (1970). Under 23 D.C. Code §704, the Chief Judge of the Superior Court for the District of Columbia acts in the role of a chief executive for the District of Columbia for purposes of extradition. If Congress adopts this Act, the law governing the retrieval of fugitives among the states and the District of Columbia would be harmonized. This would be consistent with congressional decision to harmonize the law among the states and the District of Columbia with respect to the trial of foreign charges outstanding against a prisoner. (See 18 U.S.C. Appendix, §§1-8 (1970) for congressional decision to become a party to the Interstate Agreement on Detainers.) Congressional adoption of this Act for the District of Columbia would, of course, leave untouched the retrieval of fugitives between distant federal judicial districts—a matter which is covered by Rule 40 of the Federal Rules of Criminal Procedure.

§1-102. [*Conditions of Release.*] The law of pre-trial release of this State governs release of a person pursuant to Sections 2-103, 3-106, 4-105, and 5-101.

COMMENT

In other sections the law of state of the forum applies to the setting of bail, and the purpose of this section is to apply the law of the same state with respect to bail condition violations.

§1-103. [*Non-Waiver by This State.*] This Act and proceedings under it are not exclusive and do not affect the authority of this State to:

(1) try a demanded or requested person for a crime committed within this State;

(2) take custody of a demanded or requested person by extradition or rendition proceedings for the purpose of trial, sentence, or punishment for a crime committed within this State;

(3) take custody of a person under other provisions of law, including interstate agreements; or

(4) release a person from custody upon any valid conditions.

COMMENT

Although the denial of exclusivity applies generally to "proceedings under it (the Act)," it is not intended to change the language that is currently expressed in the

last provision to §25A of the Uniform Criminal Extradition Act: "[N]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." 11 U.L.A. Crim. Law and Proc. 291 (Master ed. 1974).

This section works on behalf of both the demanding state and the asylum state. For example, should an extradition be initiated by a demanding state to the asylum state, this section permits the asylum state to continue to try a demanded or requested person for any crime committed within the asylum state. In addition we could have the following hypothetical. The asylum governor's warrant for arrest has been issued and the person has been arrested under this warrant. At this time the individual was discovered to be wanted for another crime in the asylum state. This section clarifies the position of the asylum state. It is not bound to continue the extradition process merely because its governor has issued the warrant of arrest. A local warrant could intervene and at that point presumably the prosecutors of the asylum and demanding states would then discuss which warrant should proceed first. In addition the governor of the asylum state could withdraw his warrant and presumably enter into an agreement with the governor of the demanding state.

This section clarifies the position of the pass-through state. It indicates that there is no immunity from service of process for crimes committed within pass-through states. Again at that point this section permits the pass-through state at least to bargain with the demanding state for the opportunity to try the demanded or requested person.

This section also clarifies the position of the state which has released custody of an individual to a demanding state. That process of release does not involve a waiver of the right of the asylum state to regain custody of the demanded person for the trial of crimes committed within the asylum state.

Paragraph (3) indicates that this Act is not the exclusive act or procedure by which states may regain custody of persons in aid of the administration of state criminal justice. There are a number of interstate accomodations in the form of compacts or uniform acts that collectively assert state interest in the involuntary transfer of persons across state lines for the administration of state criminal justice. (For a listing of these acts and compacts, see Murphy, J., *Arrest by Police Computer* 51 (Lexington Books 1976).)

ARTICLE II

PROCEEDINGS PRIOR TO EXTRADITION AND RENDITION

§2-101. [*Arrest Without a Warrant.*]

(a) A peace officer may arrest a person without an arrest warrant upon probable cause to believe that the person is the subject of another state's arrest warrant issued for (i) commission of a crime punishable by death or imprisonment for a term exceeding one year, (ii) escape from confinement, or (iii) violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding.

(b) The arrested person must be brought forthwith before a judge of the [ ] court.

(c) The judge of the [ ] court shall issue an order to continue custody or other process to assure the appearance of the person, if testimony or affidavit shows probable cause to believe the person is the subject of another state's

arrest warrant issued for (i) the commission of a crime punishable by death or imprisonment for a term exceeding one year, (ii) escape from confinement, or (iii) violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding.

COMMENT

This section relates to the situation where a police officer receives information by telephone or other means including a computer terminal that a person is subject to another state's arrest warrant. On the basis of this information the police officer makes an arrest.

The phrase "probable cause" does not mean probable cause to believe a crime has been committed and that the person committed the crime. It means probable cause to believe that the person is subject to another state's arrest warrant. In this way, this section codifies the existing law that permits police in one state, upon reasonable information that a person has committed a felony in another state, to arrest that person without a warrant when found in the asylum state. See *State v. Klein*, 25 Wisc. 2d 294, 130 N.W.2d 816 (1964).

This section also permits a warrantless arrest of persons who have been processed beyond arrest in the administration of criminal justice in the demanding state. A warrantless arrest is permitted of escapees, or violators of bail, probation, parole or other judicial order arising out of a criminal proceeding. Therefore, in all warrantless arrests permitted under this section, there is *either only* an arrest warrant extant in the demanding state, *or* the interest of the demanding state has proceeded beyond arrest. This section demands more of the underlying crime (punishable by more than one year in prison) when only an arrest warrant is extant in the demanding state.

The blanks before "court" permit each state to select the court which should exercise jurisdiction over extradition.

§2-102. [*Issuance of Process or Arrest Warrant Prior to Receipt of Demand or Request.*]

(a) [Upon application of a prosecuting official] a judge of the [ ] court shall authorize the issuance of an arrest warrant or other process to obtain the appearance of a person, if testimony or affidavit shows probable cause to believe:

(1) the person is in this State; and

(2) the person is the subject of another state's arrest warrant issued for (i) the commission of a crime punishable by death or imprisonment for a term exceeding one year, (ii) escape from confinement, or (iii) violation of any term of bail, probation, parole, or order arising out of a criminal proceeding.

(b) Other process to obtain the appearance of a person must require the appearance before a judge of the [ ] court.

(c) The arrest warrant must require that the person be brought forthwith before a judge of the [ ] court.

COMMENT

The bracketed language means that the enacting state chooses whether an application by a prosecuting official should always precede the issuance of an arrest warrant under this section.

The language "or other lawful process" permits the judge to use process other than an arrest warrant, such as a citation, to assure the appearance of the accused for hearing under Section 2-103.

See also Comment to Section 2-101 on the meaning of "probable cause" and the requirement that the crime be punishable by at least imprisonment for one year.

§2-103. [*Appearance Prior to Receipt of Demand or Request.*]

(a) The judge shall inform the person appearing pursuant to Section 2-101 or 2-102 of:

(1) the name of the other state that has subjected the person to an arrest warrant;

(2) the basis for the arrest warrant in the other state;

(3) the right to assistance of counsel; and

(4) the right to require a judicial hearing under this Act before transfer of custody to the other state.

(b) After being informed by the judge of the effect of a waiver, the arrested person may waive the right to require a judicial hearing under this Act and consent to return to the other state by executing a written waiver in the presence of the judge. If the waiver is executed, the judge shall issue an order to transfer custody pursuant to Section 5-101 or, with the consent of the official upon whose application the arrest warrant was issued in the other state, authorize the voluntary return of the person to that state.

(c) Unless a waiver is executed pursuant to subsection (b), the judge shall (i) release the person upon conditions that will reasonably assure availability of the person for arrest pursuant to Section 3-105 or 4-104, or (ii) direct a law enforcement officer to maintain custody of the person. Subject to Section 2-104, the period of conditional release or custody may not exceed 30 days.

COMMENT

This section and the other sections of this Act that refer to waivers do not set forth the exclusive procedures by which waiver of extradition may occur. For example, a waiver of extradition may occur as a condition to parole or probation. The validity of these waivers is determined by the developing case law on "contractual" waivers. See *Pierson v. Grant*, 527 F.2d 161 (8th Cir. 1975) and *Forester v. California Adult Authority*, 510 F.2d 58 (8th Cir. 1975). See, also, Comment to Section 1-103.

It is intended that the standards generally applicable to waivers of constitutional rights in criminal proceedings be applicable to waivers of the right to require a

judicial hearing under this Section. The waiver must be "made voluntarily, knowingly and intelligently." See, e.g., *Faretta v. California*, 422 U.S. 806 (1975).

§2-104. [*Extension of Time.*]

(a) If the person is not arrested pursuant to Section 3-105 or 4-104 within the period specified in the arrest warrant or other process, the judge for good cause may issue further orders under Section 2-103(c) for additional periods not exceeding a total of 60 days. Further extensions of orders may be requested by the person under Section 2-103(c).

(b) If the person is not arrested pursuant to Section 3-105 or 4-104 within the time specified by the judge, the person may not be subjected to any further order in this State under Section 2-103(c). If the person is subsequently arrested in this State under Section 2-101 or 2-102 on the basis of the same arrest warrant of the other state, the person may not be subjected to the issuance of orders under Section 2-103(c) and must be released from custody. However, the person may be arrested thereafter pursuant to Section 3-105 or 4-104.

COMMENT

Regardless of the number of extensions granted under this section, they must not total more than 60 days and each request for extension must be supported by a showing of good cause. These limits do not apply to extensions requested by the person subject to the orders under Section 2-103.

ARTICLE III
EXTRADITION

§3-101. [*Demand for Extradition.*]

(a) The Governor may recognize a written demand by an executive authority for the extradition of a person, alleging that the person:

(1) is charged with a crime in the demanding state; or,

(2) having been charged with or convicted of a crime in the demanding state has (i) escaped from confinement or (ii) violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the demanding state.

(b) The Governor may demand the extradition of a person from another state in accordance with the Constitution of the United States and may comply with the requirements of the other state for recognition of a demand.

COMMENT

A. *Elimination of Language That Person Demanded be "Substantially Charged"*

Part of the disharmony among state courts on the requirement of probable cause

for arrest in the asylum state is due to the unclear test in Section 3 of the Uniform Criminal Extradition Act applicable to documents submitted by the demanding state. Under Section 3, the documents submitted by the demanding state must "*substantially charge* the person demanded with having committed a crime under the law of that state. . . ." (emphasis added). Prior to the adoption of the Act, state courts used either this test or a probable cause test to justify arrest to extradite. D. Snow, *The Arrest Prior to Extradition of Fugitives from Justice of Another State*, 17 Hastings L.J. 767, 772 (1966). The choice of the "charge rule" instead of probable cause was probably due to two factors. First, the extradition clause of the Constitution uses the word "charge." More importantly, under the wording of Section 3 of the Act, the courts are not essential to the preparation of every demand for extradition. The courts (judge or magistrate unassociated with the police and prosecution) have historically intervened between the intruding government and the person by an assessment of probable cause for governmental action. It is telling that the lead case requiring probable cause determination by a court in the asylum state to justify extradition comes from a unique jurisdiction in which a judge sits in the role of the chief executive in all extradition matters. (By 23 D.C. Code, Section 704(a), the chief judge of the Superior Court for the District of Columbia sits in the manner as the governors of the several states.)

The wording of the Extradition and Rendition Act which requires that all demands for extradition include an arrest warrant issued after determination of probable cause represents a choice in favor of probable cause over the "charge rule" as the test to justify arrest to extradite. Therefore, the language requiring that the documents substantially charge the person demanded with having committed a crime under the law of the demanding state is unnecessary.

B. *Requirement of an Arrest Warrant Issued After a Probable Cause Determination in the Demanding State*

All demands must include an arrest warrant based upon a decision of an issuing authority (not connected with police or prosecution) that there is probable cause to believe that an offense has been committed and the defendant committed it. This requirement has three goals. First, the issue of probable cause should be raised in the forums of the demanding state not the asylum state, thereby resolving the conflict among the cases on whether probable cause is necessary for extradition and what forum should decide the issue. (Compare, *Kirkland v. Preston*, 385 F.2d 670 (D.C. Cir. 1967) with, *Garrison v. Smith*, 413 F Supp. 747 (N.D. Miss. 1976).) This position is consistent with the Supreme Court's recent interpretation of the extradition provision in the Constitution. See *Michigan v. Doran*, 40 L. W. 4067. Second, the requirement of an arrest warrant based upon probable cause would satisfy the Fourth Amendment requirements of independent determination of probable cause as a prerequisite to pre-trial custody (*Gerstein v. Pugh*, 95 S.Ct. 854 (1975).) Third, the requirement of an arrest warrant based upon a finding of probable cause is an efficient method of protecting persons from the use of extradition process for enforcement of private claims.

As presently written, Section 3 of the Uniform Criminal Extradition Act does not require a finding of probable cause by an independent person in the demanding state as an essential element of all forms of demand. A probable cause determination is obviously involved when an indictment is present but an information is usually signed only by the prosecutor, and the affidavit referred to in Section 3 does not exclude an affidavit framed in conclusory statutory language such as the affidavit involved in the *Kirkland* case.

Section 3 of the Criminal Extradition Act could face a serious constitutional challenge under *Gerstein* in a case where the form of demand was based upon an

information supported by an affidavit but signed by the prosecutor only. *Gerstein* involved a class action by Florida prisoners under the 1964 Civil Rights Act against Florida prosecutorial officials claiming a constitutional right to a judicial hearing on the issue of probable cause for pre-trial detention. The plaintiffs were arrested without a warrant and charged with offenses under a prosecutor's information. The Supreme Court held that the Fourth Amendment requires a timely independent determination of probable cause as a prerequisite to pre-trial detention. The court rejected the view that the prosecutor's decision to file an information was itself a determination of probable cause that furnished sufficient reason to detain a defendant pending trial. The prosecutorial judgment standing alone did not meet the requirements of the Fourth Amendment. In the Court's view, it was essential that the probable cause determination be made "by someone independent of police and prosecution." Therefore, an arrest warrant or an information issued by a person connected with the functions of police and prosecution does not meet the Fourth Amendment requirements of a determination of probable cause to justify pre-trial detention.

1. *The Type of Hearing Required for a Showing of Probable Cause*

Gerstein delineated the type of hearing that is required for determination of probable cause as a condition for any significant pre-trial restrain of liberty. The sole issue is whether there is probable cause for detaining the arrested person pending further proceedings. The court held that this issue could be determined reliably without an adversary hearing and that this hearing was not a "critical stage" in the prosecution that would require appointed counsel. The court stated that the question of probable cause could be "decided by a magistrate in a non-adversary proceeding on hearsay and written testimony." *Id.* at 866.

2. *Probable Cause to be Determined by Demanding State*

The First Circuit has recently considered the constitutionality of custody in an asylum state based upon a demand predicated upon an information signed by a prosecutor from the demanding state. The court held that a judicial determination of probable cause must precede any significant pre-trial custody including interstate extradition, and an information is insufficient. *Ierardi v. Gunter*, 528 F.2d 929 (1st Cir. 1976). The *Ierardi* case is a predictable result in the application of *Gerstein* to the extradition situation.

The importance of *Ierardi*, however, is the comment by the court on whether the determination of probable cause must be provided by the court of the asylum state, where the fugitive is held. This proposition was expressly rejected by the First Circuit on the basis of *Gerstein*. *Gerstein* explicitly rejected the need for adversarial procedures in the probable cause determination, and required only a judgment by someone other than the police or prosecution. Furthermore, *Gerstein* contemplated that the probable cause determination could be provided before as well as after an arrest. "Thus nothing in *Gerstein* prevents the demanding state from providing the requisite pre-rendition determination of probable cause." *Ierardi* at 931.

Furthermore, the First Circuit described the procedure by which the asylum state forum should assure itself that the demanding state had properly observed the Fourth Amendment requirement of a probable cause determination before rendition. "If, for example, the papers submitted by Florida (the demanding state) were to show that a judicial officer or tribunal there had found probable cause, Massachusetts would not need to find probable cause anew, nor would it need to

review the adequacy of the Florida determination." The asylum state should credit an arrest warrant shown to have been issued upon the finding of probable cause by the demanding state just as it credits an indictment from the demanding state. In other words, an asylum state "would be entitled to rely on the official representations of its sister state that the requisite determination (of probable cause) had been made." *Ierardi* at 931.

3. *The Representation that the Person Issuing the Arrest Warrant Determined Probable Cause*

One final question on the subject of probable cause is whether we can attain the goals recited above by amending Section 3 of the Criminal Extradition Act to include an arrest warrant issued by a person authorized by the law of the demanding state or must we include a requirement of a representation that probable cause existed to support the arrest warrant. The court in *Gerstein* recognized that state systems of criminal procedure vary widely. At the present time we cannot be certain that the law of all states requires arrest warrants to be issued by a *Gerstein*-type individual, i.e., unassociated with the police and prosecutors. Furthermore, the Supreme Court in 1971 considered a New Hampshire warrant which had been issued under state law by the attorney general who was actively in charge of the investigation and later was to be chief prosecutor at the trial. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). The state argued that any magistrate, confronted with the showing of probable cause made by the police in this case, would have issued the warrant in question. The Court rejected this argument because of the necessity of independence in the person making the judgment of probable cause.

Even if we canvassed the law of every state and found that all arrest warrants are issued by persons independent of the police or prosecution and all require a judgment that there is probable cause to believe that an offense has been committed and that the defendant committed it, there is no assurance that a state may change its own law with respect to these requirements. Therefore, it may be preferable to require that the papers in a demand include an arrest warrant and a statement by the person issuing it that the warrant has been issued on the basis of probable cause to believe that an offense has been committed and that the defendant committed it.

Furthermore, it should be noted that the express requirement of a representation that probable cause existed to support the arrest warrant is consistent with *Michigan v. Doran*, 99 S. Ct. 530 (1978). Actually, the requirement goes beyond *Doran*. *Doran* states that no further judicial inquiry may be had in the asylum state on the probable cause issue where that issue was determined in the demanding state. *Doran* left open the question of whether a representation of probable cause is necessary to support extradition for an arrest warrant in the demanding state. "Because Arizona provided a judicial determination of probable cause for the arrest warrant, we need not decide whether the criminal charge on which extradition is requested must recite that it was based on a finding of probable cause." *Doran* at 533 n.3.

This section mandates a representation of probable cause by the issuing authority where only an arrest warrant is extant in the demanding state.

It is not intended that a special form be developed for the recitation of probable cause. In *Doran*, the Justice of the Peace in Arizona issued the arrest warrant which stated that she had found "reasonable cause to believe that such offense(s) were committed and that [Doran] committed them." As in *Doran* the representation of probable cause may appear on any of the papers; for example, on the complaint or warrant or both.

C. *The Requirement of an Arrest Warrant Where There Has Been an Indictment*

There is a question as to whether or not an arrest warrant should be required from the demanding state where there has been an indictment. If the purpose of requiring an arrest warrant as part of the documents included in the demand is to satisfy the Fourth Amendment requirement of a probable cause determination for pre-trial confinement, this purpose is already satisfied by the existence of the indictment. "It reasonably cannot be doubted that, in the court to which the indictment is returned, the finding of an indictment, fair upon its face, by a properly constituted grand jury, conclusively determines the existence of probable cause for the purpose of holding the accused to answer." *Ex parte United States*, 287 U.S. 241, 249-50 (1932). It appears that the requirement of an arrest warrant supported by probable cause with an indictment forces the demanding state "to paper the same wall twice." McKusick, Chief Justice, at p. 9 in *Sawyer v. Maine*, Decision No. 1618, Law Docket No. Cum-77-40 (Feb. 24, 1978 Maine Supreme Court).

On the other hand, an analogy to the Federal Rules of Criminal Procedure raises an argument in favor of an arrest warrant with an indictment in addition to symmetry within the sub-parts of the Section. The Federal Rules require the issuance of an arrest warrant even after an indictment has been found by a grand jury (Rule 9). The argument has been made that Rule 9 means that the court has no discretion and must issue an arrest warrant if the government attorney makes the request. This supposition has recently been challenged by Judge Marvin Frankel who argues that this is not, and ought not to be, the law. Judge Frankel argues that the Fourth Amendment should be fairly read to disfavor the automatic issuance of arrest warrants for indicated defendants. "Meaningful, if modest, ends are served by requiring the prosecutor to state reasons for such warrants, which should be withheld in the absence of valid reasons though they should, perhaps always, be granted upon the mere statement of valid reasons." Frankel, *Bench Warrants Upon the Prosecutor's Demand: A View From The Bench*, 71 Col. L. Rev. 403, 415 (1972).

Rather than risk a future constitutional test of a demand for execution which is comprised only of an indictment without an arrest warrant, the safe course may be to require the arrest warrant even with the indictment since the additional requirement of the arrest warrant imposes an insignificant burden upon the demanding state.

D. *The Requirement of Certification of Documents and Authentication of Demand*

The significance that should attach to the documents that comprise a demand is that the asylum state governor and judges should be entitled to rely on these documents as official representations from the demanding state. See *Ierardi v. Gunter*, 528 F.2d 929, 931 (1st Cir. 1976). The arrest warrant, indictment, information, judgment of conviction, or court order (of sentence imposed or deferred) are public records, and *certification* is the the appropriate mark that should be placed on these documents to impart reliability. Consistent with general rules of evidence (see McCormick, *Evidence*, p. 556-557), these copies should be certified by the officials who have custody of the original records. See Section 1-101 (10) for the definition of "Certified Copy."

Certification of the documents would be consistent with the approach taken under the Uniform Reciprocal Enforcement of Support Act with respect to the proof of foreign support orders. (See, Sec. 9 Reciprocal Enforcement of Support Act, 9 Uniform Laws Annotated 881 (Master ed. 1973).) Certification of the above listed documents would also be consistent with the manner in which the sending state

under the Interstate Agreement on Detainers relies on the representation of the receiving state that an indictment, information or complaint has been filed against a prisoner and is the basis for a detainer. (See, Article V(b)(2) of the Interstate Agreement on Detainers; *A.B.A: Minimum Standards for Criminal Justice, Standards Relating to Speedy Trial*, p. 54 (1967).)

With respect to the copy of the provision of law which the person demanded is alleged to have violated, we rely on the trend developed by the Uniform Judicial Notice of Foreign Law Act which provides that every court within the adopting state shall take judicial notice of the common law and statutes of every other state. It is true that all states have not adopted this Act, but adoption by the state of the proposed Act would apply the judicial notice umbrella to the proof of the criminal law of the demanding state for purposes of the Act.

E. *Demand for a Person Violating Conditions of a Deferred Sentence*

The language of Section 3 of the Uniform Criminal Extradition Act provides for a demand for a fugitive who has violated his probation after a sentence has been imposed. A growing number of states, however, have adopted by state statute the practice of deferring the imposition of sentence and granting probation or other conditions of release. (See Mon. Rev. Codes, Section 95-2206; Calif. Penal Code, Section 1203.1; see other statutes cited in Comment to rule 613 of the *Uniform Rules of Criminal Procedure, Proposed Final Draft* (National Conference of Commissioners on Uniform State Laws 1974).) The advantage of a grant of probation or other conditions associated with the deferral of the imposition of sentence is that the defendant is usually granted the right to move the court to allow a withdrawal of a guilty plea and a dismissal of charges if the conditions of probation are fulfilled. (See, Mon. Rev. Codes, Section 95-2207.) It could be argued that a person who violates conditions such as probation attached to a deferral of sentence and leaves the state is not within Section 3 of the Act. As presently worded, the Act appears to apply to a person who has violated the terms of probation for a crime for which the person has already been sentenced.

The Uniform Extradition and Rendition Act applies the extradition process to criminal proceedings where a court order has been issued and the demanded person has violated the order. This language applies the extradition process to a person who has been granted probation or other conditions before sentencing, which is the situation when sentencing is deferred. Furthermore, this language covers violations of bail, parole and probation after sentencing—situations which are now treated separately under Section 3 of the Criminal Extradition Act. It should be noted, however, that the requirement of an arrest warrant in all demands precludes extradition where there has been a violation of a judicial order in a civil proceeding and there is no arrest warrant.

F. *Protection Against Use of Extradition to Enforce Private Claims*

Apart from Fourth Amendment considerations, the requirement of an arrest warrant from the demanding state would protect persons from the use of extradition process for enforcement of private claims. The structure of Section 3 of the Criminal Extradition Act, which does not require an arrest warrant, is probably based upon an early Supreme Court decision in *Compton v. Alabama*, 214 U.S. 1 (1908). In *Compton* the Court held that requisition requests could be initiated by affidavits before "notary publics" of a state—that is, persons not empowered to issue arrest warrants. Therefore, the Act has not required judicial scrutiny of all requisition requests in the demanding state.

The danger of perverting the extradition process to a mechanism for enforcement of private claims was treated in the Act by a requirement that prosecutors in the demanding state represent that the application is not instituted to enforce a private claim (Criminal Extradition Act, Section 23). Protection to persons from this perversion of the extradition process is afforded by a less cumbersome method in the proposal that all forms of demand be accompanied by an arrest warrant issued by a judge of the demanding state based upon a determination of probable cause.

G. *The Scope of Article III*

Article III applies extradition to persons "charged with a crime in the demanding state." There is no limitation on the type or seriousness of the crime. This is so because it is intended that Article III provide a system to reach all crimes covered by the Extradition Clause in the Constitution. In *Kentucky v. Dennison*, 65 U.S. 66 (1860) the Ohio governor asserted that Ohio, the asylum state, retained discretion to determine what offenses are extraditable under the Constitution. Mr. Chief Justice Taney rejected this assertion and held that "every offense known to the law of the State from which the party charged has fled" is included in the Extradition Clause. *Id.* at 102.

By contrast the more summary rendition process of Article IV is limited to those punishable by death or imprisonment for more than a year. The power of peace officers to make warrantless arrests in the asylum state under Article III is similarly qualified. These qualifications, however, do not change the basic proposition that extradition under Article III reaches all crimes within the Extradition Clause of the Constitution.

§3-102. [*Supporting Documentation.*] The demand for extradition must be accompanied by a certified copy of an arrest warrant and one of the following:

(1) a statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that a crime has been committed and the demanded person committed the crime, together with a copy of the provisions of law defining the crime and fixing the penalty therefor;

(2) a certified copy of the indictment upon which the arrest warrant is based;

(3) a statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that the demanded person has violated any term of bail, probation, or an order arising out of a criminal proceeding; or

(4) a certified copy of a judgment of conviction or a sentencing order accompanied by a statement by the issuing authority that the demanded person has escaped from confinement or violated any term of parole.

COMMENT

See Comment to Section 3-101.

§3-103. [*Governor's Investigation.*] The Governor may:

(1) investigate the demand for extradition and the circumstances of the demanded person;

(2) request the Attorney General or any [other] prosecuting official to investigate; or

(3) hold a hearing.

COMMENT

Sections 4, 7, 8, 9 and 21 of the Uniform Criminal Extradition Act have been combined because they relate to the issuance of a warrant of arrest by the governor of the asylum state. The power of the governor to conduct a hearing prior to the issuance of the warrant is clarified.

There exists the question of whether the statute should mandate the issuance of the warrant by the governor on the finding that the demand complies with the requirements of Section 1. This Act continues the language of the Uniform Criminal Extradition Act which appears to give a governor discretion in issuing the warrant; "If the governor decides that the demand should be complied with . . .". This language reflects the historic power of the governor of the asylum state to deny extradition by refusing to issue the warrant of arrest. This is a gubernatorial power that has responded to equitable pleas that are not traditionally entertained by a court of the asylum state in the habeas corpus proceedings. (For a description of the exercise of this historical power by the governor of the asylum state during the period of lynchings in this country, see Murphy, J., *Arrest by Police Computer* 84-85 (Lexington Books 1976).)

It appears that all states except California have adopted the language of the present Section 7 of the Uniform Criminal Extradition Act which implies discretion to the governor in deciding to comply with the demand by the executive authority of a sister state. The California version of Section 7 of the Act states that "if a demand conforms to the provision of this chapter, the governor . . . shall issue a warrant of arrest. . . ." Because of this unique version of the language of Section 7 in California, the issue was raised whether California judicial process should issue to compel the governor to issue a warrant of arrest after receiving a demand for extradition from South Dakota (*South Dakota v. Brown*, 20 Cal. 3d 765 (1978).) The majority of the California Supreme Court answered the issue in the negative. Therefore, the synthesis of the language of the Uniform Criminal Extradition Act (and this Act), the *South Dakota* decision, and *Kentucky v. Dennison*, 65 U.S. (24 How.) 66 (1861) supports the proposition that the constitutional duty of a state executive to extradite a fugitive is not enforceable by either federal or state judicial process.

§3-104. [*Extradition of Persons Imprisoned or Awaiting Trial.*]

(a) If a demanded person is being prosecuted, is imprisoned, is on parole or probation, or is subject to an order arising out of a criminal proceeding, in this State, the Governor may:

(1) grant extradition;

(2) delay action; or

(3) agree with the executive authority of the demanding state to grant extradition upon conditions.

(b) The Governor may agree with an executive authority of another state for the extradition of a person who is being prosecuted, is imprisoned, is on parole or probation, or is subject to an order arising out of a criminal proceeding, in that state upon conditions prescribed by the agreement.

COMMENT

This section consolidates what presently appears in the Uniform Criminal Extradition Act as the first paragraph of Section 5 and all of Section 19. Both provisions deal with the same topic—extradition of persons in prison or awaiting trial.

The states apparently considered the writ of habeas corpus ad prosequendum to be superseded by Section 5 of the Uniform Criminal Extradition Act for purposes of obtaining persons imprisoned in other states for prosecution. There is some question as to whether this supersession has occurred again by state ratification of the Interstate Agreement on Detainers, that provides in Article IV a new procedure for a state to obtain a prisoner located in the prison of another state for purposes of prosecution. The states are now using Article IV of the I.A.D. procedure to obtain prisoners located in prisons of other states for prosecution, and Section 3-104 would merely operate as an alternative procedure for retrieval of persons in prison or awaiting trial in the asylum state.

For a discussion of whether the Interstate Agreement on Detainers has superseded Section 5 of the Uniform Criminal Extradition Act, or whether Section 5 and the I.A.D. operate as alternative procedures, see Murphy, J., *Arrest by Police Computer*, p. 68 fn. b, and pp. 71-73 (Lexington Books 1976).

§3-105. [*Governor's Warrant.*]

(a) If the Governor decides to comply with the demand for extradition, he shall issue a warrant for the arrest and extradition of the demanded person. The Governor's warrant must recite the name of the state demanding extradition and the crime charged or other basis for the demand.

(b) The Governor may specify the time and manner in which the warrant is executed.

(c) At any time before the transfer of custody of the demanded person to the agent of the demanding state, the Governor may recall the warrant or issue another warrant.

(d) The warrant must be directed to any law enforcement officer and require compliance with Section 3-106.

(e) The law relating to assistance in the execution of other arrest warrants in this State applies to the execution of the Governor's warrant.

COMMENT

See Comment to Section 3-103.

§3-106. [*Rights of Demanded Person.*]

(a) A person arrested under a Governor's warrant must be brought forthwith before a judge of the [ ]

court of this State who shall receive the warrant and inform the person of:

(1) the name of the state demanding extradition;

(2) the crime charged or other basis for the demand;

(3) the right to assistance of counsel; and

(4) the right to a judicial hearing under Section 3-107.

(b) After being informed by the judge of the effect of a waiver, the demanded person may waive the right to a judicial hearing and consent to return to the demanding state by executing a written waiver in the presence of the judge. If the waiver is executed, the judge shall issue an order to transfer custody pursuant to Section 5-101 or, with the consent of the executive authority of the demanding state, authorize the voluntary return of the person.

(c) If a hearing is not waived, the judge shall hold it within 10 days after the appearance. The demanded peron nd the prosecuting official of the [county] in which the hearing is to be held must be informed of the time and the place of the hearing. The judge shall (i) release the person upon conditions that will reasonably assure availability of the person for the hearing, or (ii) direct a law enforcement officer to maintain custody of the person.

COMMENT

Sections 3-106 and 3-107 establish a new right to a judicial extradition hearing to contest the arrest under the governor's warrant. Under the Uniform Criminal Extradition Act, the method of challenge is by application for a writ of habeas corpus.

There are two significant reasons to support the decision to establish a judicial extradition hearing as the method to test an extradition arrest. First is the impropriety of using an extraordinary writ as the statutorily directed method to challenge confinement during the ordinary procedures of the statute. There are a number of interstate accommodations in the form of compacts or uniform acts that collectively assert state interest in the involuntary transfer of persons across state lines for the administration of criminal justice. (For a listing of these acts and compacts, see Murphy, *Arrest by Police Computer*, p. 51 (Lexington Books 1976).) None of these acts or compacts utilize the extraordinary writ of habeas corpus as the ordinary method of challenging confinement. Rather, these acts or compacts set forth a hearing on issues that reflect the operation of the particular act or compact. (See e.g., §2 of the Uniform Act to Secure the Attendance of Witnesses, and §§2 and 3 of the Uniform Rendition of Accused Persons Act.) Furthermore, Rule 40 of the Federal Rules of Criminal Procedure governs the retrieval of fugitives from distant federal judicial districts. The Rule prescribes a particular hearing, which reflects the operation of the Rule, rather than the writ of habeas corpus, as the method to challenge the retrieval.

An additional reason for establishing a judicial extradition hearing is the opportunity to define the issues to be raised at the hearing—an opportunity which is not available with the writ of habeas corpus. The Extradition and Rendition Act defines the issues that can be raised at the hearing, and these issues reflect the other pro-

visions of the Act. The allocation and burden of proof on the issue of identity reflects prevailing case law. See, *Ede v. Bray*, 495 P.2d 1139 (Colo. 1972).

On the waiver of the right to a judicial hearing, see Comment to Section 2-103.

It is not constitutionally permissible to eliminate the right to habeas corpus, and the silence of the statute on habeas corpus should not be read as intending such a consequence. Habeas corpus may be replaced or superseded, however, to the extent that the replacement judicial hearing covers the issues triable in a habeas proceeding and affords the accused an adequate and effective remedy. *Swain v. Pressley*, 430 U.S. 372 (1976).

The Rules of Evidence, other than those with respect to privileges, do not apply in proceedings for extradition or rendition, including the judicial hearing set forth in these sections. Rule 1101(b)(3) of Uniform Rules of Evidence, 13 U.L.A. 257 (Master ed. 1975).

§3-107. [*Judicial Extradition Hearing.*]

(a) If the judge after hearing finds that the Governor has issued a warrant supported by the documentation required by Sections 3-101(a) and 3-102, the judge shall issue an order to transfer custody pursuant to Section 5-101 unless the arrested person establishes by clear and convincing evidence that he is not the demanded person.

(b) If the judge does not order transfer of custody, he shall order the arrested person to be released. If the agent of the demanding state has not taken custody within the time specified in the order to transfer custody, the demanded person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant is issued as a result of a new demand for extradition or a new request for rendition.

(c) An order to transfer custody is not appealable.

(d) An order denying transfer is appealable.

COMMENT

See Comment to Section 3-106.

ARTICLE IV
RENDITION

§4-101. [*Request for Rendition.*]

(a) Subject to subsections (b) and (c), this State may grant a written request by an issuing authority of another state for the rendition of a person in this State.

(b) The request must be refused if the requested person is:

(1) being prosecuted or is imprisoned in this State for a criminal offense;

(2) the subject of a pending proceeding in a juvenile court of this State brought for the purpose of adjudicating the person to be a delinquent child; [or]

(3) in the custody of an agency of this State pursuant to an order of disposition of a juvenile court of this State as a delinquent child [; or]

[(4) under the supervision of the juvenile court of this State pursuant to informal adjustment or an order of disposition of the court].

(c) The request must allege that the person:

(1) is charged with a crime punishable in the requesting state by death or imprisonment for a term exceeding one year in the requesting state, or

(2) having been charged with or convicted of a crime in the requesting state, has escaped from confinement or violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the requesting state.

(d) Upon application of a prosecuting official of this State, an issuing authority may request rendition of a person from another state and may comply with requirements of that state for the granting of the request. A correction official who is also an issuing authority may request rendition from another state of a person described in subsection (c)(2), and subject to the jurisdiction of the correction official.

COMMENT

For a comparison of the scope of Article III with that of Article IV, see topic G of Comment to Section 3-101 and Section 3-102 of Article IV.

The bracketed language in (b)(4) is available to states that have adopted the Uniform Juvenile Court Act, 9A U.L.A. 1 (Master ed. 1979).

§4-102. [*Supporting Documentation.*] The request for rendition must be accompanied by a certified copy of the arrest warrant and one of the following:

(1) a statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that a crime has been committed and the requested person committed the crime, together with a copy of the provisions of law defining the crime and fixing the penalty therefor;

(2) a certified copy of the indictment upon which the arrest warrant is based;

(3) a statement by the issuing authority that the warrant was issued after a determination of probable cause to believe that the requested person has violated any term of bail, probation, or other judicial order arising out of a criminal proceeding; or

(4) a certified copy of a judgment of conviction or a sentencing order accompanied by a statement by the issuing au-

thority that the requested person has escaped from confinement or violated any term of parole.

COMMENT

On the requirement of a statement that a probable cause determination supports the arrest warrant, see part 3 of topic B in Comment to Sections 3-101 and 3-102 of Article III.

§4-103. [*Filing of Request.*] A request for rendition under Section 4-101 must be filed with [an office of this State designated by the Governor for the receipt of requests for rendition], which office shall forward the request to the proper prosecuting official of this State. The Governor by written order may terminate the use of rendition at any time before the issuance of an order to transfer custody.

COMMENT

The bracketed language permits selection of the office in the asylum state to receive requests for rendition from other states. It may be desirable to designate the office which currently has major responsibility for processing demands for extradition from other states. This would permit the development of uniform policy relating to rendition and extradition and would centralize in one office communication and inquiries from other states regarding fugitive retrieval.

The requirement for filing all requests with one office in the asylum state permits an administrative control over requests flowing into a state and gubernatorial intervention. This historical role of the governor of an asylum state in the process of extradition has been preserved by permitting the governor to terminate the use of rendition at any time prior to the execution of the order of transfer of custody.

It should be noted, however, that the Uniform Rendition of Accused Persons Act, first promulgated in 1967 and now adopted by 8 states (11 U.L.A. Crim. Law & Proc. 541 (Master ed. 1974)), eliminated any gubernatorial role in the retrieval of persons who violated conditions of bail. Section 4-103 would re-introduce some minimal level of gubernatorial intervention in the extradition of bail violators at least in the 8 states that have adopted the Uniform Rendition of Accused Persons Act. It is unresolved as to whether state legislation replacing executive extradition with judicial extradition would be consistent with the Extradition Clause of the Constitution. (See Murphy, J., *Arrest by Police Computer*, pp. 60-64 (Lexington Books 1976).) Therefore, it seemed preferable to maintain a minimum potentiality of gubernatorial intervention in the operation of removal procedures under Article III.

§4-104. [*Issuance of Arrest Warrant or Process.*] Upon receipt of a request under Section 4-103, the prosecuting official shall apply to a judge of the [ ] court for the issuance of an arrest warrant, or other process, to obtain the appearance of the requested person. If the judge finds that the provisions of Sections 4-101 and 4-102 have been complied with, he shall issue the warrant or other process. The warrant

must require that the person be brought forthwith before a judge of the [ ] court. Other process to obtain the appearance of a person must require the appearance before a judge of the [ ] court.

§4-105. [*Rights of Requested Person.*]

(a) The judge shall inform the person appearing pursuant to Section 4-104 of:

(1) the name of the state requesting rendition;

(2) the basis for the arrest warrant in the other state;

(3) the right to assistance of counsel; and

(4) the right to require a judicial hearing pursuant to Section 4-106.

(b) After being informed by the judge of the effect of a waiver, the requested person may waive the right to a judicial hearing and consent to return to the requesting state by executing a written waiver in the presence of the judge. If the waiver is executed, the judge shall issue an order to transfer custody pursuant to Section 5-101 or with consent of the official upon whose application the request was issued authorize the voluntary return of the person.

(c) If a hearing is not waived, the judge shall hold it within 10 days after the appearance. The requested person and the prosecuting official of the [county] in which the hearing is to be held must be informed of the time and place of the hearing. The judge shall (i) release the person upon conditions that will reasonably assure availability of the person for the hearing, or (ii) direct a law enforcement officer to maintain custody of the person.

COMMENT

On the waiver of the right to require a judicial hearing, see Comment to Section 2-103.

§4-106. [*Judicial Rendition Hearing.*]

(a) If the judge after hearing finds that Sections 4-101 and 4-102 have been complied with, he shall issue an order to transfer custody pursuant to Section 5-101 unless the arrested person establishes by clear and convincing evidence that he is not the requested person.

(b) If the judge does not order transfer of custody, he shall order the arrested person to be released. If the agent of the requesting state has not taken custody within the time specified in the order to transfer custody, the requested person must be released. Thereafter, an order to transfer custody may be en-

tered only if a new arrest warrant is issued as a result of a new demand for extradition or a new request for rendition.

(c) An order to transfer custody is not appealable.

(d) An order denying transfer is appealable.

COMMENT

On the inapplicability of the Rules of Evidence to this hearing, see Comment to Sections 3-106 and 3-107. On the availability of a habeas corpus proceeding, see Comment to Sections 3-106 and 3-107.

ARTICLE V
MISCELLANEOUS

§5-101. [*Order to Transfer Custody.*]

(a) Except as provided in subsection (b), a judicial order to transfer custody issued pursuant to Section 2-103, 3-106, 3-107, 4-105, or 4-106 must direct a law enforcement officer to take or retain custody of the person until an agent of the other state is available to take custody. If the agent of the other state has not taken custody within 10 days, the judge may:

(1) order the release of the person upon conditions that will assure the person's availability on a specified date within 30 days; or

(2) extend the original order for an additional 10 days upon good cause shown for the failure of an agent of the other state to take custody.

(b) If the agent of the other state has not taken custody within the time specified in the order, the person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant or other process to obtain appearance of a person is issued as a result of a new demand for extradition or a new request for rendition.

(c) The judge in the order may authorize the voluntary return of the person with consent of the executive authority or with the consent of the official upon whose application the request for rendition was made.

§5-102. [*Confinement.*] An agent who has custody of a person pursuant to an order to transfer custody issued in any state may request confinement of the person in any detention facility in this State while transporting him pursuant to the order. Upon production of proper identification of the agent and a copy of the order, the detention facility shall confine the person for that agent. The person is not entitled to another extradition or rendition proceeding in this State.

COMMENT

The first two sentences of this section clarify the privilege of an agent to confine the person in a detention facility in the asylum or pass-through state while transporting the person to the demanding state pursuant to an order to transfer custody. The last sentence of this section denies to a person the right to demand a new extradition or rendition proceeding in the pass-through or asylum state *after* custody has been transferred to an agent of the demanding state by an order to transfer custody. The denial of this right continues the law that is presently found in the last sentence of Section 12 of the Uniform Criminal Extradition Act.

§5-103. [*Cost of Return.*] Unless the states otherwise agree, the state to which the person is being returned shall pay the cost of returning the person incurred after transfer of custody to its agent.

COMMENT

This section was drafted to take into account the agreements that exist and that are being planned among the states to reduce the cost of fugitive retrieval by computerizing data on fugitive retrievals and by sharing retrieval expenses and responsibility.

§5-104. [*Applicability of Other Law.*]

(a) A person returned to this State is subject to the law of this State as well as the provisions of law that constituted the basis for the return.

(b) This Act does not limit the powers, rights, or duties of the officials of a demanding, or requesting, state or of this State.

COMMENT

Paragraph (b) continues the language that is currently expressed in the last proviso to Section 25A of the Uniform Criminal Extradition Act. See Section 1-103 and the first paragraph of the Comment to that section.

§5-105. [*Payment of Transportation and Subsistence Costs.*] If a person returned to this State is found not to have violated the law that constituted the basis for the return, the judge may order the [county] to pay the person the cost of transportation and subsistence to:

(1) the place of the person's initial arrest; or

(2) the person's residence.

COMMENT

These payments are not mandated. This section merely permits a judge to receive and decide a petition to pay for transportation and subsistence costs. The judge in the judge's discretion decides two questions:

(1) whether to order the county to pay transportation and subsistence; and,

(2) whether the transportation and subsistence costs are to be paid to the person's residence or the place of the person's initial arrest.

§5-106. [*Uniformity of Application and Construction.*] This

Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

§5-107. [*Short Title.*] This Act may be cited as the Uniform Extradition and Rendition Act.

§5-108. [*Severability.*] If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

ARTICLE VI
EFFECTIVE DATE AND REPEAL

§6-101. [*Time of Taking Effect.*] This Act takes effect . . .

§6-102. [*Repeal.*] The following Acts and parts of Acts are repealed:

(1) Uniform Rendition of Accused Persons Act, and,

(2) Uniform Criminal Extradition Act.

RECOMMENDATION RE DISCLOSURES IN THE SALE OF VISUAL ART OBJECTS PRODUCED IN MULTIPLES

In its 1969 Annual Report, the Commission recommended adoption of two proposals, relating to the sale of art, that were based on recently enacted New York legislation. See 1969 Report at pp. 41-45. Those proposals were enacted in 1970 and are now found at M.C.L. §442.311 (P.A. No. 90 of 1970) and M.C.L. §442.321 (P.A. No. 121 of 1970). Last year New York adopted related legislation governing the sale of art produced in multiples (e.g., prints and photographs). Similar legislation seems appropriate for Michigan. The demand for art multiples has expanded to the point where most consumers lack any expertise in the field. In addition, the sale of multiples has become a common fund raising technique for charitable organizations.

Both consumers and reputable dealers can benefit from the establishment of basic standards relating to the description of multiples, the scope of warranties, etc. The need for such legislation is well stated in the legislative finding that accompanied the recent New York legislation (Chapter 992 of the New York Laws of 1981):

> "Legislative findings and intent. The legislature finds that the sale of visual art objects produced in multiples, specifically prints and photographs, affects large segments of the public. In volume and monetary value the marketing of these objects has substantially increased during the past two decades. Those affected by this development include a broad spectrum of individuals, as well as corporate and institutional purchasers.

This expansion is stimulated in part by the convergence of several factors. One is an intensified interest in and appreciation of aesthetic qualities in art and cultural and artistic pursuits. Another is a felt need to acquire art.

"The legislature further finds that among the main questions to be answered, and about which information is necessary, in determining the value of visual art multiples, in addition to recognized and established intrinsic aesthetic merit, are: (a) whether the multiple is properly attributed to the named artist; (b) whether the multiple was signed by the artist after it was produced; (c) whether the multiple is a reproduction of a work formerly created by the artist in a different medium; (d) whether the purported number of multiples in a 'limited edition' is the actual number; and (e) whether there are other editions of the same or virtually the same image.

"The legislature further finds that in order to avoid confusion on the part of the consumer, disclosure of salient factors, which legitimate merchants voluntarily provide, is essential. Such disclosure will have the beneficial effects of (a) alleviating confusion; (b) preventing deceptive merchandising

practices; (c) providing a basis for further consumer self-education; and (d) protecting the public in areas where abuse is not immediately discernable." 6A McKinney's Session Law News, Ch. 992, p. 2186 (1981).

The New York legislation was adopted following extensive consultation with art dealers and imposes disclosure requirements that are both informative and feasible. The heart of the legislation lies in proposed section 3 which imposes varying disclosure requirements depending upon the year in which the multiple was produced. Section 4 defines the warranty extending from such disclosures (cf. M.C.L. §442.322) and provides for a procedure whereby the dealer can disclaim knowledge as to a particular item of information. Section 5 affords protection to consignors (e.g., artists) for violations by merchant-consignees. Section 6 provides for a basic remedy of refund of purchase price plus interest therein, but does not preclude any other claims for damages (e.g., in the case of fraud) that may be available under the common law.

The proposed bill follows:

DISCLOSURES IN THE SALE OF VISUAL ART OBJECTS PRODUCED IN MULTIPLES

A bill to provide for the regulation of the sale and advertising of visual art objects, specifically prints and photographs, produced in multiples.

Sec. 1. As used in this act:

(a) "Art merchant" means (i) a person who deals in the visual art multiples to which this act applies, (ii) a person who by his occupation holds himself out as having knowledge or skill peculiar to such visual art multiples, or (iii) a person to whom such knowledge or skill is attributed by his employment of an agent or other intermediary who by his occupation holds himself out as having such knowledge or skill. The term "art merchant" includes an auctioneer who sells such multiples at public auction, but excludes persons, not otherwise defined or treated as art merchants herein, who are consignors or principals of auctioneers.

(b) "Visual art multiples" or "multiples" means prints, photographs (positive or negative) and similar art objects produced in more than one copy and sold, offered for sale, or consigned in, into or from this state for an amount in excess of one hundred dollars exlusive of any frame. The terms "visual art multiples" or "multiples" include individual pages or sheets taken from books or magazines and offered for sale or sold as visual art objects, but excludes books and magazines.

(c) "Print" means visual art objects that are (i) produced by engraving, etching, woodcutting, lithography, serigraphy, and similar processes, (ii) produced or developed from photographic negatives, or (iii) produced or developed by any combination of the foregoing processes.

(d) "Master" means a printing plate, stone, block, screen, photographic negative or other like material which contains an image used to produce visual art multiples.

(e) "Artist" means the person who conceived or created the image which is contained in or constitutes the master.

(f) "Signed" means autographed by the artist's own hand, and not by mechanical means of reproduction, after the multiple was produced, whether or not the master was signed or unsigned.

(g) "Limited edition" means visual art multiples produced from a master, all of which are the same image and bear numbers or other markings to denote the limited production thereof to a stated maximum number of multiples, or are otherwise held out as limited to a maximum number of multiples.

(h) "Proofs" means multiples which are the same as, and which are produced from the same master as, the multiples in a limited edition, but which, whether so designated or not, are set aside from and are in addition to the limited edition to which they relate.

(i) "Written instrument" means a written or printed agreement, bill of sale, invoice, certificate of authenticity, catalogue or any other written or printed note or memorandum describing the multiple which is to be sold, exchanged or consigned by an art merchant.

(j) "Person" means an individual, partnership, corporation, association or other group however organized.

Sec. 2(1). An art merchant shall not sell or consign a multiple in, into or from this state unless a written instrument is furnished to the purchaser or consignee, prior to a sale or consignment, which sets forth as to each multiple, the descriptive information required by section 3 for the applicable time period. Information supplied pursuant to this subsection shall be clearly and distinctly addressed to each individual item listed in section 3 unless the required data is not applicable for the particular time period. This section applies to transactions between merchants and other merchants as well as between merchants and non-merchants.

(2) If a prospective purchaser so requests, the required information shall be transmitted to him prior to payment or to the placing of an order for a multiple. If payment is made by the purchaser prior to delivery of the multiple, the information shall be furnished at the time of, or prior to, delivery, in which case the purchaser shall be entitled to a refund if, for reasons related to matter contained in such information, he returns the multiple substantially in the condition in which received, within 30 days of receiving it.

(3) With respect to auctions, the required information may be furnished in catalogues or other written materials which are made readily available for consultation and purchase prior to sale, provided that a

bill of sale, receipt or invoice describing the transaction is then provided which makes reference to the catalogue and lot number in which such information is supplied.

(4) An art merchant shall not cause a catalogue, prospectus, flyer or other written material or advertisement to be distributed in, into or from this state which solicits a direct sale, by inviting transmittal of payment for a specific multiple, unless it clearly sets forth, in close physical proximity to the place in such material where the multiple is described, the descriptive information required by section 3 for the applicable time period. In lieu of this required information, such written material or advertising may set forth the material contained in the following quoted passage, or the passage itself, if the art merchant then supplies the required information prior to or with delivery of the multiples:

"Sections 432.325-432.331 of the Michigan Compiled Laws provide for disclosure in writing of certain information concerning multiples of prints and photographs when sold for more than one hundred dollars ($100) each, exclusive of any frame, prior to effecting their sale. This law requires disclosure of such matters as the identity of the artist, the artist's signature, the medium, whether the multiple is a reproduction, the time when the multiple was produced, use of the master which produced the multiple, and the number of multiples in a 'limited edition.' If a prospective purchaser so requests, the information shall be transmitted to him prior to payment or the placing of an order for a multiple. If payment is made by a purchaser prior to delivery of such an art multiple,

this information will be supplied at the time of or prior to delivery, in which case the purchaser is entitled to a refund if, for reasons related to matter contained in such information, he returns the multiple substantially in the condition in which received, within 30 days of receiving it. In addition, if after payment and delivery, it is ascertained that the information provided is incorrect, the purchaser may be entitled to certain remedies."

This subsection is not applicable to general written material or advertising which does not constitute an offer to effect a specific sale.

(5) In each place of business in the state where an art merchant is regularly engaged in sales of multiples, the art merchant shall post in a conspicuous place, a sign which, in a legible format, contains the information included in the following passage:

> "Sections 432.325-432.331 of the Michigan Compiled Laws provide for the disclosure in writing of certain information concerning prints and photographs. This information is available to you in accordance with that law."

Sec. 3(1). As to each multiple produced after the effective date of this act, a statement containing the following information shall be supplied, as provided in section 2:

(a) The name of the artist.

(b) If the artist's name appears on the multiple, whether the multiple was signed by the artist. If the multiple was not signed by the artist, the statement shall note the source of the artist's name on the multiple, such as whether the artist placed his signature on the master, whether his name was stamped or estate stamped on the multiple, or was from some other source or in some other manner placed on the multiple.

(c) The following information concerning the medium or process:

(i) A description of the medium or process, and where pertinent to photographic processes the material, used in producing the multiple, such as whether the multiple was produced through etching, engraving, lithographic, serigraphic, or a particular method and/or material used in a photographic developing process. If an established term, in accordance with the usage of the trade, cannot be employed accurately to describe the medium or process, a brief, clear description shall be stated.

(ii) If the artist was deceased at the time the master was made which produced the multiple, that shall be stated.

(iii) If the multiple or the image on or in the master constitutes a mechanical, photomechanical or photographic copy or reproduction of an image previously

created or produced by the artist in another medium or on or in a different master, for a purpose other than the creation of the multiple being described, this information and the respective mediums shall be stated.

(iv) If paragraph (c)(iii) of this subsection is applicable, and the multiple is not signed, the statement shall note whether the artist authorized or approved in writing the multiple or the edition of which the multiple being described is one.

(d) The following information concerning the use of the master:

(i) If the multiple is a "posthumous" multiple, that is, if the master was created during the life of the artist but the multiple was produced after the artist's death, that shall be stated.

(ii) If the multiple was made from a master which produced a prior limited edition, or from a master which constituted or was made from a reproduction of a prior multiple of the master which produced the prior limited edition, that shall be stated.

(e) As to multiples produced after the year 1949, the statement shall note the year or approximate year the multiple was produced. As to multiples produced prior to 1950, the statement shall note the year, approximate year, or period when the master was made which produced the multiple and/or when the particular multiple being described was produced. The requirements of this paragraph shall be satisfied when the year stated is approximately accurate.

(f) The following information concerning the size of the edition:

(i) Whether or not the multiple being described is offered as one of a limited edition. If it is offered as one of a limited edition, then state the number of multiples in the edition, and whether and how the multiple is numbered.

(ii) Unless otherwise disclosed, the number of multiples stated pursuant to paragraph (f)(i) of this subsection shall constitute an express warranty, as defined in section 4 of this act, that no additional numbered multiples of the same image, exclusive of proofs, have been produced.

(iii) The number of multiples stated pursuant to paragraph (f)(i) of this subsection shall also constitute an express warranty, as defined in section 4 of this act, that no additional multiples of the same image, whether designated "proofs" other than trial

proofs, numbered or otherwise, have been produced in an amount which exceeds the number in the limited edition by 10 or 10 percent, whichever is greater.

(iv) If the additional multiples exceed the number specified in paragraph (f)(iii) of that subsection, then the statement shall note the number of proofs other than trial proofs, or other numbered or unnumbered multiples, in the same or other editions, produced from the same master, or from another master as described in paragraph (d)(ii), and whether and how they are signed and numbered.

(2) As to each multiple produced during the period from 1950 to the effective date of this act, a statement shall be supplied, as provided in section 2, containing all of the information required by subsection (1) of this section except for the information specified in paragraphs (c)(iv), (d)(ii), (f)(iii) and (f)(iv).

(3) As to each multiple produced during the period from 1900 through 1949, a statement shall be supplied, as provided in section 2, containing all of the information required by subsection (1) of this section except for the information specified in paragraphs (c)(ii), (c)(iii), (c)(iv), (d) and (f).

(4) As to each multiple produced prior to 1900, a statement shall be supplied, as provided in section 2, containing all of the information required by subsection (1) of this section except for the information specified in paragraphs (b), (c)(ii), (c)(iii), (c)(iv), (d), and (f).

Sec. 4(1). Whenever an art merchant furnishes the name of the artist pursuant to subsections (3) and (4) of section 3, governing multiples produced prior to 1950, such merchant shall be bound only by the provisions of section 2 of Act No. 121 of the Public Acts of 1970, being section 442.322 of the Compiled Laws of 1970, except that said section shall be deemed to include sales to art merchants.

(2) Whenever an art merchant furnishes the name of the artist for a time period after 1949, or furnishes other information required by section 3 for any time period, as to transactions including offers, sales, or consignments made to non-merchants and to another art merchant, such information shall be a part of the basis of the bargain and shall create express warranties as to the information provided. Such warranties shall not be negated or limited because the merchant in the written instrument did not use formal words such as "warrant" or "guarantee" or because the merchant did not have a specific intention or authorization to make a warranty or because any required statement is, purports to be, or is capable of being merely the seller's opinion. The existence of a basis in fact for information warranted by virtue of this subsection shall not be a defense in an action to enforce such

warranty. However, with respect to photographs produced prior to 1950, and other multiples produced prior to 1900, as to the information specified in section 3(1)(c), the merchant shall be deemed to have satisfied that section if a reasonable basis in fact existed for the information provided. When information is not supplied as to any item specified in section 3 because not applicable, that omission shall constitute an express warranty that the section 3 requirement relating to that information is not applicable.

(3) Whenever an art merchant disclaims knowledge as to a particular item about which information is required, his disclaimer shall be ineffective unless it is clearly, specifically and categorically stated as to the particular item and is contained in the physical context of other language setting forth the required information as to the particular multiple.

Sec. 5(1). The rights, liabilities and remedies created by this act shall be construed to be in addition to and not in substitution, exclusion or displacement of other rights, liabilities and remedies provided by law, except where such construction would, as a matter of law, be unreasonable.

(2) Whenever an artist sells or consigns a multiple of his own creation, the artist shall incur the obligations prescribed by this act for an art merchant, but an artist shall not otherwise be regarded as an art merchant.

(3) An artist or merchant who consigns a multiple to a merchant for the purpose of effecting a sale of the multiple shall have no liability to a purchaser under this act if such consignor, as to the consignee, has compiled with the provisions of this act.

(4) When a merchant has agreed to act as the agent for a consignor, who is not an art merchant, for the purpose of effecting the sale of a multiple, or when a merchant has agreed to act as the agent for an artist for the purpose of supplying the information required by this act, such merchant shall incur the liabilities prescribed by this act with respect to a purchaser. However, if such merchant can establish that his liability results from incorrect information which was provided to him in writing by the consignor or artist, and that the merchant in good faith relied on such information, the consignor or artist shall similarly incur such liabilities with respect to the purchaser and such merchant.

Sec. 6(1). An art merchant, including a merchant consignee, who sells a multiple without providing the information required in sections 2 and 3 of this act, or who provides information which is mistaken, erroneous or untrue, except for harmless errors such as typographical errors, shall be liable to the purchaser to whom the multiple was sold. The merchant's liability shall consist of the consideration paid by the purchaser with interest from the time of payment at the rate prescribed by subsection (4) of section 6013 of the Public Acts of 1961, as amended, being section 600.6013(4) of the Compiled Laws of 1970, upon the return

of the multiple in substantially the same condition in which received by the purchaser. This remedy shall not bar or be deemed inconsistent with a claim for damages or with the exercise of additional remedies otherwise available to the purchaser.

(2) In any proceeding in which an art merchant relies upon a disclaimer of knowledge as to any relevant information specified in section 3 as to any time period, such disclaimer shall be effective unless the claimant is able to establish that the merchant failed to make reasonable inquiries, according to the custom and usage of the trade, to ascertain the relevant information or that such relevant information would have been ascertained as a result of such reasonable inquiries.

(3) In any action to enforce any provision of this act, the court may allow a prevailing purchaser the costs of the action together with reasonable attorneys' and expert witnesses' fees. If the court determines that a purchaser's action was brought in bad faith, it may allow such expenses to the art merchant as it deems appropriate.

(4) An action to enforce any liability under this act shall be brought within the period prescribed by section 2725 of Act No. 174 of the Public Acts of 1962, being section 440.2725 of the Michigan Compiled Laws of 1970.

Sec. 7. This act shall take effect six months after it is enacted into law.