Research Study Number 2.1

MANDATES FOR INTERSTATE PRISONER TRANSPORTS

COMPUTER
ASSISTED
PRISONER
TRANSPORTATION
INDEX
SERVICE

NATIONAL SHERIFF'S ASSOCIATION
E 320, 1250 CONNECTICUT AVE. WASHINGTON, D.C. 20036
(202) 872-0422

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MANDATES FOR INTERSTATE PRISONER TRANSPORTS

David M. Hudak
Project Director

Richard D. Engler
Senior Research Associate

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PREFACE

The Research Series of the Computer Assisted Prisoner Transportation Index Service (CAPTIS) is the second serial of CAPTIS program documentation. The purpose of the Research Series is to gather essential information and investigate significant issues of relevance to the interstate transport of prisoners so that findings and conclusions of real value may be made available to criminal justice policy makers. Though each is an individual monograph, when fitted together the Research Studies in this serial will provide a comprehensive analysis of present and future problems and opportunities for improvements in interstate prisoner transportation in the United States. Special attention will be given to assessing the potential of CAPTIS as a means of reducing the costs of moving prisoners across state lines.

As presently planned, the Research Series is to consist of three Research Studies with others forthcoming should the need arise. The three Research Studies now scheduled for publication are:

Research Study Number 2.1: Mandates for Interstate Prisoner Transports

Research Study Number 2.2: Costs of Interstate Prisoner

Transports: The Potential for CAPTIS Savings

Research Study Number 2.3: Evaluation of CAPTIS Pilot Sites

Readers desiring further information about CAPTIS research are requested to write or telephone:

CAPTIS Project Director
National Sheriffs' Association
Suite 320
1250 Connecticut Avenue, N. W.
Washington, D. C. 20036
(202) 872-0422

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MANDATES FOR INTERSTATE PRISONER TRANSPORTS

Interstate prisoner transports are authorized by federal and state laws intended to reach and fulfill a variety of criminal justice needs. The following is an introduction to the interstate crime control legislation governing the transport of prisoners across state lines. Basically, this legislation mandates two categories of transport: a) transports of fugitives from justice, witnesses in criminal proceedings, deserting spouses refusing to support their families, and persons of unsound mind which are accomplished pursuant to uniform laws promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL), and b) transports of parole and probation violators, inmates of penal or correctional institutions, juveniles, and the mentally ill which are undertaken in accordance with interstate compacts sponsored by the Council of State Governments (CSG). The purpose, statutory bases, and manner of performance of these transports are briefly outlined to provide a fuller understanding of the legal requirements and opportunities for arranging

cooperative interstate prisoner transports through the CAPTIS system.(1)

A. TRANSPORTS UNDER THE UNIFORM LAWS

The uniform laws are the expert product of a select body of lawyers and judges of standing and experience and of teachers of law in some of the nation's most distinguished law schools. In existence since 1892, the NCCUSL is composed of commissioners from each of the states, the District of Columbia, and Puerto Rico. In most of these jurisdictions the commissioners are appointed by the chief executive acting under express legislative authority. In the remaining jurisdictions appointments are made by general executive authority. The commissioners are united in a permanent organization, under a constitution and bylaws. The funds necessary for carrying out the work

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(1) The following materials, developed by state attorneys general to provide technical instruction and policy guidance to state and local legal officers, were most generously made available to the NSA staff and proved to be of invaluable assistance in the preparation of this Research Study in instances too numerous always to acknowledge individually: T. Jacobs, ARIZONA APPELLATE DECISIONS: EXTRADITION AND HABEAS CORPUS (n.d.) and EXTRADITION FOR YOU AND ME: AN EXPOSE IN THREE-QUARTER TIME (n.d.); J. Marquez & M. Ash, KANSAS GOVERNOR'S EXTRADITION MANUAL (1972); G. Libby, B. Merrell & G. West, THE MAINE PROSECUTOR: EXTRADITION MANUAL (1973); N. Rodgers, MARYLAND EXTRADITION MANUAL (1976); Extradition Procedures (n.d.) (memorandum prepared by the Minnesota attorney general's office); K. Frankland & P. Ellsworth, MICHIGAN EXTRADITION MANUAL (1974); MISSOURI PROSECUTOR'S HANDBOOK (n.d.); Nevada Extradition Procedures (Sept. 25, 1975) (memorandum); Oregon District Attorney's Association, OREGON EXTRADITION MANUAL (n.d.); STATE OF NORTH CAROLINA: APPLICATION FOR REQUISITIONS FOR FUGITIVES FROM JUSTICE (1968); J. Pena, TEXAS EXTRADITION AND RENDITION PROCEDURE (1974).

of the NCCUSL are derived from contributions from state governments, from appropriations made by the American Bar Association, and from subscriptions from state bar associations.(2)

The NCCUSL works through both standing and special committees. All proposals of subjects for legislation are referred to a standing Committee on Scope and Program for an investigation of whether it is desirable and feasible to draft a uniform law. If so, a special committee is assigned to report the draft of an act. Preliminary drafts of proposed acts are submitted from year to year and are discussed in detail section by section. When finally approved by the NCCUSL, the uniform acts are promulgated for general adoption throughout the jurisdiction of the United States.(3)

A record of the activities of the NCCUSL, the reports of its committees, and its approved acts are printed in a handbook of annual proceedings. The approved acts, sometimes with annotations, are printed also in separate pamphlet form.(4) In construing uniform acts, the courts frequently make use of these published materials, which

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(2) HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS OF THE ANNUAL CONFERENCE MEETING IN ITS SEVENTY-EIGHTH YEAR 197-98 (1969) [hereinafter all publications in this series are cited according to short title and numbered meeting or conference, e.g., NCCUSL HANDBOOK: SEVENTH-EIGHTH CONFERENCE].

(3) Id.

(4) Id.

have been cited as "powerful dicta" and a "most appropriate source of law."(5)

The NCCUSL has drafted and approved approximately 200 acts.(6) Of this large number, very few have exercised such a formidable influence upon the development of modern American jurisprudence as the uniform laws dealing with the interstate transport of prisoners.(7)

1. Interstate Extradition Of Fugitives From Justice

> Extradition is the surrender, by one nation or state to another, of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which being competent to try and punish him, demands the surrender. In other words, it is the surrender of one state or nation to another, on its demand, of persons charged with the commission of crime within its jurisdiction, that they may be dealt with according to its laws.
>
> Office of the District Attorney, Los Angeles, California, DISTRICT ATTORNEY'S ROLE 1.

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(5) 2A J. Sutherland, STATUTES AND STATUTORY CONSTRUCTION Sec. 48.11 (4th ed. 1973). [hereinafter cited as STATUTES]. Because of their authority as extrinsic aids to construction, these materials will be referred to many times in the course of this and other CAPTIS publications as indicative of what may or may not be accomplished within or incident to the terms of a particular uniform law.

(6) NCCUSL HANDBOOK: SEVENTY-EIGHTH CONFERENCE 198 (1969).

(7) Of course, not every uniform law has been on target. The NCCUSL has promulgated a Uniform Mandatory Disposition of Detainers Act and a Uniform Rendition of Accused Persons Act of which, "[t]o date, only a handful of states are party thereto." The first of these uniform laws "is substantially preempted" by The Agreement on Detainers, a widely accepted interstate compact; the second, "is described as a supplement to the Uniform Criminal Extradition Act," but "its subject matter is completely covered by the latter." N. Rodgers, MARYLAND EXTRADITION MANUAL, 47 (1976). These uniform acts will not be discussed in this Research Study.

The need for procedures to return criminals fleeing from one state to another was recognized from the earliest days of this nation "as a matter demanding special consideration," (8) and as a result the corpus juris concerning the interstate extradition of fugitives has evolved in elaborate form under both federal and state heads of jurisdiction.

a. The Federal Requirement

The interstate extradition of fugitives from justice is controlled in the first instance by the United States Constitution and the laws of Congress. Clause 2 of Section 2, Article IV of the Constitution is the "extradition clause":

> A person charged in any state with Treason, Felony, or Other Crime, who shall flee from justice, and be found in another state, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the Crime.

The "federal statute" 18 U.S.C.A., Section 3182, (1969), gives

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(8) Interstate Extradition, 1 J. Pub. L. 463,463 (1952).

effect to and stipulates how this command shall be enforced:

> Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

Thus the extradition clause guarantees the right to demand the fugitive, and the federal statute outlines the basic procedures to be used in exercising this right. The Constitution and laws of Congress, however, have left much to be worked out by state legislation.

b. The State Response

> It is recognized that the states have the right to legislate except in conflict with the Constitution and the Act of Congress; and as would be expected, all of them have done so.
>
> > Report of the Committee on an Act To Make Uniform the Law of the Several States Relating to the Extradition of Persons Charged with Crime, NCCUSL HANDBOOK: Thirty-Second Meeting 362,365 (1922)
>
> It therefore appeared wise to the Conference of Commissioners on Uniform State Laws to prepare an act embracing what appear to be the best features of all the various laws of the several states as well as the judicial law applicable and to offer it as a practicable law for all the states to adopt, thus codifying the practice and promoting

uniformity at the same time.

> An Explanation of the Act to Make Uniform the Law in the Several States with Reference to the Extradition of Persons Charged with Crime, NCCUSL HANDBOOK: Thirty-Sixth Meeting 589,590 (1926)

First approved by the NCCUSL in 1926, amended in 1932, and revised in 1936, the Uniform Criminal Extradition Act (hereinafter Extradition Act) is now in effect in whole or in part in forty-seven states, the District of Columbia, the Panama Canal Zone, Puerto Rico, and the Virgin Islands, see EXHIBIT I: States That Have Adopted The Uniform Criminal Extradition Act.

The Extradition Act applies to a) persons who are present in any state, commit a crime therein, and then flee to another state, including convicts who escape and flee and parolees or probationers who violate the conditions of their parole or probation and abscond,(9) b) persons charged with crime in any state who have departed that state involuntarily, for instance, those who commit a crime in a state but are then removed beyond its borders under the legal compulsion of extradition proceedings to answer for other crimes committed elsewhere,(10) and c) who while outside a state commit acts

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(9) Sec. 3.

(10) Sec. 5.

EXHIBIT 1

STATES THAT HAVE ADOPTED THE
UNIFORM CRIMINAL EXTRADITION ACT

STATE	STATUTE
Alabama	Code of Ala., Tit. 15, secs. 48-75
Alaska	Alas. Stat. Ann. 1962, secs. 12.70.010 to 12.70.290
Arizona	Ariz. Rev. Stat. 1956, secs. 13-1301 to 13-1328
Arkansas	Ark. Stat. 1947, secs. 43-3001 to 43-3028
California	Cal. Penal Code, Tit. 12, sec. 1548 to 1556.2
Colorado	Colo. Rev. Stat. 1973, secs. 16-19-101 to 16-19-133
Connecticut	C.G.S.A., secs. 54-157 to 54-185
Delaware	Del. Code Ann. 1953, Tit. 11, sec. 2501 to 2530
District of Columbia	D. C. Code 1961, sec. 23-701 to 23-707
Florida	Fla. Stat. Ann. 1941, sec. 941.01 to 941.30
Georgia	Ga. Stat. 1957, secs. 44-401 to 44-429
Hawaii	Haw. Rev. Stat. 713
Idaho	Idaho Code 1947, sec. 19-4501 to 19-4527
Illinois	Ill. Ann. Stat. 1954,ch.60, sec. 18 to 49 (Supp. 1965)
Indiana	Ind. Code 1971, sec. 35-2.1-2-3
Iowa	Iowa Code Ann. 1946, sec. 759.1 to 759.29
Kansas	K.S.A., secs. 22-2701 et seq.
Kentucky	Ky. Rev. Stat. 1963, sec. 440.150 to 440.420
Louisiana	L.S.A.,C.Cr.P.,arts.261 to 280
Maine	Me. Rev. Stat. Ann., Tit. 15, secs. 201 to 229
Maryland	Md. Ann. Code 1957, Art. 41, secs. 16 to 43
Massachusetts	M.G.L.A., ch. 276, secs. 11 to 20R

STATE	STATUTE
Michigan	Mich. Comp. Laws 1970, secs. 780.1 to 780.31
Minnesota	Minn. Stat. Ann. 1959, secs. 629.01 to 629.29
Missouri	Mo. Rev. Stat. 1969, secs. 548.011 to 548.300
Montana	Mont. Rev. Code 1947,secs. 95.3101 to 95.3130
Nebraska	Neb. Rev. Stat. 1943, secs. 29.701 to 29.728
Nevada	N.R.S., secs. 179.177 to 179.245
New Hampshire	N.H. Rev. Stat. Ann. 1955 secs. 612:1 to 612:30
New Jersey	N.J.S.A. 1952, secs. 2A:160-6 to 2A:160-35
New Mexico	Comp. Laws 1953, secs 41-19-1 to 41-19-30
New York	N.Y. Crim. Proc. Law, secs. 570.02 to 570.66
North Carolina	N.C.Gen.Stat.,secs. 15-55 to 15-84
Ohio	Ohio Rev.Code 1965, secs. 2963.01 to 2963.29
Oklahoma	Okla. Stat. Ann., Tit. 22 secs. 1141.1 to 1141.30
Oregon	Ore. Rev. Stat. 1973, secs. 133.743 to 133.857
Panama Canal Zone	C.Z.S., Tit. 6, secs. 5021 to 5050
Pennsylvania	Pa. Stat., Tit. 19, secs. 191.1 to 191.31
Puerto Rico	P.R.C.A., Tit. 34, secs. 1881 et seq.
Rhode Island	Gen. Laws 1956, secs. 12-9-1 to 12-9-35
South Dakota	S. D. Code 1939, secs. 34.1701 to 34.1729
Tennessee	Tenn. Code Ann. 1955, secs. 40-1001 to 40-1034
Texas	Tex. C. Crim. Proc., Art. 51.13
Utah	Utah Code Ann. 1953, secs. 77-56-1 to 77-56-28
Vermont	V.S.A., Tit. 13 secs. 4941 to 4969

STATE	STATUTE
Virgin Islands	5V.I.C., secs. 3801 to 3829
Virginia	Va. Code 1950, secs. 19.2-84 to 19.2-118
Washington	R.C.W.A., secs. 10.88.200 to 10.88.930
West Virginia	W. Va. Code Ann. 1961, secs. 241 to 247
Wisconsin	Wis. Stats. 1958, secs. 964.01 to 964.29
Wyoming	Wyo. Stat. 1957, secs. 7-27 to 7-53

SOURCE: N. Rodgers, MARYLAND EXTRADITION MANUAL Appendix 1 (1976).

which intentionally result in the commission of a crime in the demanding state.(11) Its detailed provisions have established most state procedure for applying the law of interstate extradition in respect to matters not covered by either the Framers of the Constitution or by the Congress.

The Extradition Act provides that a fugitive may be arrested in the asylum state with or without a warrant in order that he may be held in custody to await extradition. When a sworn complaint is made to a judge or magistrate that any person is a fugitive from justice from another state, he is required to issue a warrant of arrest directing a law enforcement officer to apprehend and bring the accused before him or any other convenient judge, magistrate, or court.(12) The accused may also be arrested without a warrant by any person upon reasonable information that he stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year.(13) When arrested without a warrant, the accused must be taken before a judge or magistrate with all practicable speed and a fugitive complaint must be made against him under oath setting the grounds for arrest.(14)

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(11) Sec. 6.

(12) Sec. 13.

(13) Sec. 14.

(14) Id.

Any person who is sought to be extradited may waive all incidents of an extradition proceeding. To do this, the accused must execute or subscribe a writing in the presence of a judge of any court of record within the asylum state, declaring that he consents to return to the demanding state. But before the waiver can be executed or subscribed, the judge must inform the accused of his right to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in the act.(15)

If the accused refuses to waive extradition, his preliminary arrest and detention must be followed by the governor's warrant for extradition which, if the same charges are involved, supersedes all other pending statutory extradition proceedings against the accused(16) and takes priority over any other state process by which the fugitive is held.(17) The governor's extradition warrant authorizes the law enforcement officer or private person to whom it is directed to arrest the accused at any time or any place where he may be found within the asylum state and to deliver the accused to the designated agent of the

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(15) Sec. 26.

(16) In re Heck, 122 W. Va. 175, 7 S.E. 2d 866 (1940).

(17) Barrett v. Bartley, 383 Ill. 437, 50 N.E.2d 517 (1943): Annot. 147 A.L.R. 935 (1943).

demanding state.(18) The governor, however, issues his warrant only if the demand is formally sufficient(19) and if he decides that it should be complied with.(20) In reaching his decision the governor may consider "the situation and circumstances of the person so demanded, and whether he ought to be surrendered."(21) Lastly, "no person arrested upon such warrant shall be delivered over to the agent" until he has been brought before a judge of a court of record and afforded an opportunity to test the legality of his detention by writ of habeas corpus.(22) Willful disobedience of this statutory requirement is a misdemeanor punishable by a fine of not more than $1000 or imprisonment of not more than six months or both.(23)

Having received custody of the fugitive and upon a showing of satisfactory written evidence that he is actually transporting the fugitive to the demanding state after a requisition by its governor, the extradition agent may confine his prisoner in the county or city

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(18) Sec. 8.

(19) Sec. 3.

(20) Sec. 7.

(21) Sec. 4.

(22) Sec. 10.

(23) Sec. 11.

jail of any state through which he passes. The agent is made chargeable with the expenses of such temporary confinement. The fugitive is not entitled to demand a new requisition while in the pass-through state.(24)

2. Interstate Extradition of Witnesses In Criminal Proceedings

> Compulsory attendance of nonresident witnesses in felony cases is a subject of growing interest to all officials engaged in criminal prosecutions. Prosecuting attorneys have long contended that unless there is power somewhere to compel a witness to proceed from one state to another to testify many guilty persons will escape punishment for their crimes.
>
> Report of Committee on a Uniform Act to Compel the Attendance of Nonresident Witnesses in Criminal Cases, NCCUSL HANDBOOK: THIRTY-NINTH CONFERENCE 356, 356 (1929).

> I think, in common with every judge, I have found the greatest existing defects in criminal administration to result from the inability to secure witnesses.
>
> Commissioner Meldrim, NCCUSL HANDBOOK: FORTY-FIRST CONFERENCE 45 (1931).

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(24) Sec. 12.

Though the federal and state machinery for the interstate extradition of fugitives from justice "succeeded admirably well in preventing the criminal himself from escaping the jurisdiction in which the crime was perpetrated," these laws were found not to be the whole answer for 'criminals were quick to learn that prosecution could be just as effectively prevented by spiriting away, through bribery or intimidation, the material witnesses in their cases."(25) At common law no state could compel a person who was in another state to appear and testify in any kind of proceeding, unless that person first had been summoned as a witness by a court of the demanding state before he crossed the state line. In addition, the federal constitutional right of confrontation prevents, to a great extent, the use of depositions against a defendant in a criminal trial.(26) Consequently, though "[v]ery often a certain witness is as necessary to a criminal prosecution as is the defendent himself,"(27) as a practical matter, "[I]t is virtually impossible in criminal cases to obtain, without

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(25) Criminal Law - Statutes Compelling Attendance Of Out-Of-State Witnesses, 19 N.C.L.Rev. 391, 392 (1940-41).

(26) Cases are collected in, Notes, 31 Minn. L. Rev. 707, 708 (1946-47).

(27) Criminal Procedure: Constitutionality Of The Uniform Act To Secure The Attendance Of Witnesses From Without A State In Criminal Proceedings, 46 Cal. L. Rev. 625, 629 (1958) [hereinafter cited as Attendance of Witnesses].

reciprocal state rendition legislation, the testimony of a witness who either lives outside the state or has fled from such state before being summoned."(28)

Two reciprocal uniform laws have been developed to solve this problem. The first of these, the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings (hereinafter Attendance of Witnesses Act) "is designed to accomplish in the case of a material witness in a criminal proceeding, what the Uniform Extradition Act accomplishes in the case of a defendant in a criminal action."(29) Drafted by the NCCUSL in 1931 and subsequently revised in 1936, it is now in force in forty-nine states, Puerto Rico, the Panama Canal Zone, and the Virgin Islands, see EXHIBIT II: States That Have Adopted The Uniform Act To Secure The Attendance Of Witnesses From Without A State In Criminal Proceedings.

The Attendance of Witnesses Act provides that a material witness may be arrested, held in custody, and delivered over to an officer from a requesting state. The arrest is initiated at the suggestion of the judge in the state where the criminal proceeding is being held, who may recommend in a certificate under seal that the person sought as a witness be taken into "immediate custody" in order "to assure his attendance" at the trial or grand jury investigation in which the

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(28) Notes 708.

(29) Attendance of Witnesses 626.

EXHIBIT II

STATES THAT HAVE ADOPTED THE UNIFORM ACT TO SECURE THE ATTENDANCE OF WITNESSES FROM WITHOUT A STATE IN CRIMINAL PROCEEDINGS

STATE	STATUTE
Alaska	Alas.Stat.Ann. 1962,sec. 12.50.010 to 12.50.080
Arizona	Ariz. Rev. Stat. 1956, secs. 13-1861 to 13-1866
Arkansas	Ark. Stat. 1947, secs. 43-2005 to 43-2009
California	Cal. Penal Code, secs. 1334 et seq.
Colorado	Colo. Rev. Stat. 1973, secs. 39-6-1 to 39-6-6
Connecticut	C.G.S.A., sec. 54-22
Delaware	Del. Code Ann. 1953, Tit.II, secs. 3521 to 3526
District of Columbia	D.C. Code 1971, secs. 23-801 et seq.
Florida	Fla. Stat. Ann. 1941, secs. 942.01 to 942.06
Hawaii	Haw. Rev. Stat., secs. 719 et seq.
Idaho	Idaho Code 1947, 19-3005
Illinois	Ill. Stat. Ann. 1954, ch. 38, secs. 156-1 to 156-6
Indiana	Ind. Code 1971, secs. 35-6.2-1 to 35-6.2-5
Iowa	Iowa Code Ann. 1946, secs. 781.14 to 781.17
Kansas	K.S.A., secs. 22-4201 to 22-4206
Kentucky	Ky. Rev. Stat. 1963, sec. 421.230 to 421.270
Louisiana	L.S.A., C. Cr. P., arts. 741 to 745
Maine	Me. Rev. Stat. Ann., Tit. 15, secs. 1411 to 1415
Maryland	Md. Code Ann. 1957, Cts. & Jud. Proc. Art., secs. 9-301 to 9-307
Massachusetts	M.G.L.A., ch. 233, secs. 13A to 13D
Michigan	Mich. Comp. Laws 1970, secs. 767.91 to 767.95
Minnesota	Minn. Stat. Ann. 1959, secs. 634.06 to 634.09
Mississippi	Miss. Code Ann. 1972, secs. 99-9-27 to 99-9-35
Missouri	Mo. Rev. Stat. 1969, secs. 491.400 to 491.450
Montana	Mont. Rev. Code 1947, secs. 95-1808 to 95-1811
Nebraska	Neb. Rev. Stat. 1943, secs. 29-1906 to 29-1911
Nevada	N.R.S., secs. 174.395 to 174.445
New Hampshire	R.S.A., ch. 613, secs. 1 to 6
New Jersey	N.J.S.A., secs. 2A:81-18 to 2A:81-23
New Mexico	Comp. Laws 1953, secs. 41-12-13 to 41-12-18
New York	McKinney's Consol. Laws, sec. 640.10
North Carolina	N.C. Gen. Stat., secs. 8-65 to 8-70
North Dakota	N.D.C.C., secs. 31-03-25 to 31-03-31
Ohio	Ohio Rev. Code 1965, secs. 2939.25 to 2939.29
Oklahoma	Okla. Stat. Ann., Tit. 22, secs. 721 to 727
Oregon	Ore. Rev. Stat. 1973, secs. 139.210 to 139.260
Panama Canal Zone	C.Z.S., Tit. 6, secs. 4331 to 4336
Pennsylvania	Pa. Stat., Tit. 19, secs. 622.1 to 622.7
Puerto Rico	P.R.C.A., Tit. 34, secs. 1471 to 1475

Rhode Island	Gen. Laws 1956, secs. 12-16-1 to 12-16-13
South Carolina	Code Laws of S.C., Tit. 26, secs. 301 to 313
South Dakota	S.D. Code, secs. 23-40-14 to 23-40-24
Tennessee	Tenn. Code Ann., secs. 40-2429 to 40-2438
Texas	Tex. C. Crim. Proc., art. 24.28
Utah	Utah Code Ann., 1953, secs. 77-45-11 to 77-45-17
Vermont	V.S.A., Tit. 13, secs. 6641 to 6649
Virgin Islands	5 V.I. Code, secs. 3861 to 3865
Virginia	Va. Code 1950, secs. 19.1-269 to 19.1-279
Washington	R.C.W.A., secs. 10.55.010 to 10.55.130
West Virginia	W.Va. Code Ann. 1961, secs. 62-6A-1 to 62-6A-6
Wisconsin	Wis. Stats. 1958, sec. 976.02
Wyoming	Wyo. Stat. 1957, secs. 7-250 to 7-252

SOURCE: N. Rodgers, MARYLAND EXTRADITION MANUAL Appendix 1 (1976)

witness's testimony has been determined to be essential. Upon the receipt of a certificate containing such a recommendation, a judge of a court of record in the state and county where the witness is found may direct that the witness be brought before him for a hearing, and if "being satisfied of the desirability of such custody and delivery," he may then "order that said witness be forthwith taken into custody and delivered to an officer of the requesting state."(30)

These provisions were amendments to the original uniform act of 1931 which as first promulgated relied upon a summons only to direct the witness to attend a criminal proceeding in a requesting state, making no provision to assure his attendance through arrest, custody, and delivery.(31) Though the "witness so detained is not a prisoner in the sense of one charged with crime,"(32) there is no doubt that he has been placed in an effective custody lawfully obtained pending the arrival of the agent of the requesting state.

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(30) Secs. 2-3.

(31) Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings: Explanatory Note, NCCUSL HANDBOOK: FORTY-SIXTH CONFERENCE 333,333 (1936).

(32) E. Fisher, LAWS OF ARREST Sec. 40 (1967).

The second uniform law, the Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act (hereinafter Prisoners as Witnesses Act), was developed in response to an official opinion by the attorney general of New York that the Attendance of Witnesses Act did not cover the delivery to another state as a witness of a prisoner confined in a penal institution in the State of New York.(33) Its provisions closely follow those of the Attendance of Witnesses Act which it supplements. (The statutory language of the Attendance of Witnesses Act has been changed only slightly to fit the circumstances of a witness incarcerated in the asylum state.) Approved for submission to the states in 1957, the Prisoners as Witnesses Act has been adopted by eleven states, see EXHIBIT III: States That Have Adopted The Uniform Rendition Of Prisoners As Witnesses In Criminal Proceedings Act.

This uniform law requires that if the necessary conditions precedent are satisfied, the judge of the state in which the prisoner is confined "shall issue an order ...a) directing the witness to

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(33) Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act: Prefatory Note, NCCUSL HANDBOOK: SIXTY-SIXTH CONFERENCE 211 (1957).

EXHIBIT III

STATES THAT HAVE ADOPTED THE UNIFORM RENDITION OF PRISONERS AS WITNESSES IN CRIMINAL PROCEEDINGS ACT

STATE	STATUTE
Arkansas	Ark. Stats. secs. 43-2025 to 43-2034
Idaho	I.C. secs. 19-3013 to 19-3022
Illinois	S.H.A. Ch. 38, secs. 157-1 to 157-11
Kansas	K.S.A. secs. 22-4207 to 22-4215
Maine	15 M.R.S.A. secs. 1461 to 1471
Michigan	M.C.L.A. secs. 780.111 to 780.120
Nebraska	R.R.S. 1943, secs. 29-3201 to 29-3210
New Hampshire	R.S.A. 613-A: 1 to 613-A: 11
Pennsylvania	19 P.S. secs. 625.1 to 625.10
Rhode Island	Gen. Laws 1956, secs. 12-16-11 to 12-16-18
Wisconsin	W.S.A. secs. 976.01

SOURCE: UNIFORM LAWS ANNOTATED (Mast. Ed. 1974)

attend and testify, b) directing the person having custody of the witness to produce him, in the court where the criminal action is pending, or where the grand jury investigation is pending, at a time and place specified in the order, and c) prescribing such conditions as the judge shall determine."(34)

3. Interstate Extradition of Deserting Spouses

> With the increasing mobility of the American population the problem of interstate enforcement of duties of support became acute. A deserting husband was beyond the reach of process in the state where he had abandoned his family and the family had no means to follow him. Welfare departments saddled with the burden of supporting destitute families were often prevented from enforcing the duty of support in the state where the husband could be found by decisions holding that the duty existed only as to obligees within the state.
>
> The avenue of criminal enforcement was not more fruitful. Charges could be preferred against the fleeing husband but he had to be returned for trial to the state where the offense was committed. Extradition was both expensive and narrowly technical, and it was often impossible to prove that he had "fled from justice" for frequently he supported his family until he left the state and only left in order to get a job.
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> Commissioners' Prefatory Note (1950), UNIFORM LAWS ANNOTATED 888, 888-89. (mast. ed. 1974) [hereinafter cited as U. L. A.].

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(34) Sec. 3.

The nonsupport of dependents has been recognized as a social problem of grave magnitude in this country for many decades. The Uniform Desertion and Non-Support Act was approved by the NCCUSL in 1910. This act, adopted in twenty-four jurisdictions, made it a crime for a husband to desert or willfully neglect or refuse to provide for the support and maintenance of his wife in destitute or needy circumstances or for a parent to fail to perform the same duty to his child under sixteen years of age. But the 1910 Act ignored civil remedies altogether. It sought to improve the enforcement of the duties of support through the criminal law only, and in this its reach was too short for the Uniform Desertion and Non-Support Act made no provision for enforcement against husbands and fathers who fled across state lines.(35)

The Uniform Reciprocal Enforcement of Support Act (hereinafter Reciprocal Support Act) was designed to improve and extend by reciprocal legislation the enforcement of duties of support through both the criminal and civil law.(36) Approved by the NCCUSL and by the American Bar Association in their annual conferences in 1950, this act was amended in 1952 and again in 1958. By 1957 it (or substantially similar legislation) had been passed in all states, the District of Columbia, Puerto Rico, and most of the other areas under the

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(35) Commissioner's Prefatory Note (1950), 9 U.L.A., 888,888.

(36) Id., 889.

jurisdiction of the United States. In 1968 the Conference promulgated a "Revised Act" incorporating many substantial changes and several new sections.(37) The Revised Act has since been adopted in over twenty jurisdictions.(38) See EXHIBIT IV: States That Have Adopted The Uniform Reciprocal Enforcement Of Support Act for a listing of jurisdictions that have enacted this uniform law in one form or another.

The civil provisions of the Reciprocal Support Act provide what is known as the "two-state proceeding." The action is commenced by a spouse filing a simplified petition with a court in the state where the family has been deserted. The judge in the initiating state examines the petition and determines whether the facts pleaded show the existence of a duty to support. If they do, he sends the petition and a copy of the Act to a court of the responding state to which the husband has fled or in which he has property. That court obtains jurisdiction of the husband or his property, and if after a hearing it determines that a duty of support exists, it may order the defendant to furnish support and punish him for contempt should he refuse to comply.(39)

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(37) Commissioner's Prefatory Note (1968), 9 U.L.A., 806,806.

(38) 9 U.L.A. 383 (Supp. 1976).

(39) Commissioner's Prefatory Note (1950), 9 U.L.A., 888,890.

EXHIBIT IV

STATES THAT HAVE ADOPTED THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

STATE	STATUTE
Alabama	Code of Ala., Tit. 34, secs. 105 to 123
Alaska	Alas. Stat. Ann. 1962, secs. 25.25.010 to 25.25.270
Arizona	Ariz. Rev. Stat. 1956, Secs. 12-1651 to 12-1679
Arkansas	Ark. Stat. 1947, secs. 34-2401 to 34-2442
California	Cal. Penal Code, C. Cr. Pr., secs. 1650 et seq.
Colorado	Colo. Rev. State. 1973, secs. 43-2-1 to 43-2-23
Connecticut	C.G.S.A., secs. 17-327 et seq.
Delaware	Del. Code Ann. 1953, Tit. 13, 601 et seq.
District of Columbia	D.C. Code 1961, secs. 30-301 et seq.
Florida	Fla. Stat. Ann. 1941, secs. 88.011 et seq.
Georgia	Ga. Stat. 1957, secs. 99-901a et seq.
Hawaii	Haw. Rev. Stat., secs. 576-1 to 576-41
Idaho	Idaho Code 1947, sec. 7-1048 to 7-1089
Illinois	Ill. Ann. Stat. 1954, ch. 68, secs. 101 et seq.
Indiana	Ind. Code 1971, secs. 31-2-1-1 to 31-2-1-39
Iowa	Iowa Code Ann. 1946, secs. 252A.1 et seq.
Kansas	K.S.A., secs. 23-451 et seq.
Kentucky	Ky. Rev. Stat. 1963, secs. 407.010 et seq.
Louisiana	L.S.A., secs. 13:1641 et seq.
Maine	Me. Rev. Stat. Ann., Tit. 19, sec. 331
Maryland	Md. Ann. Code 1957, Art. 89C, secs. 1 to 39
Massachusetts	M.G.L.A., ch. 273A, secs. 1 to 17
Michigan	Mich. Comp. Laws, secs. 780.151 et seq.
Minnesota	Minn. Stat. Ann. 1951, secs. 518.41 to 518.53
Mississippi	Code 1942, secs. 456.01 et seq.
Missouri	Mo. Rev. Stat. 1969, secs. 454.010 to 454.360
Montana	Mont. Rev. Code 1947, secs. 93-2601-41 to 93-2601-82
Nebraska	Neb. Rev. Stat. 1943, secs. 42-762 et seq.
Nevada	N.R.S., secs. 130-010 et seq.
New Hampshire	R.S.A., secs. 546:1 to 546:41

New Jersey	N.J.S.A. 1952, secs. 2A4 to 30.1
New Mexico	Comp. Laws 1953, secs. 22-19-28 to 22-19-68
New York	McKinney's Consol. Laws of N.Y. Ann., Dom. Rel. 530 (similar)
North Carolina	N.C. Gen. Stat., secs. 52A-1 to 52A-20
North Dakota	N.D.C.C., sec. 14.12.1
Ohio	Ohio Rev. Code 1965, sec. 3115.33
Oklahoma	Okla. Stat. Ann., Tit. 12, secs. 1600.1 et seq.
Oregon	Ore. Rev. Stat. 1973, secs. 110.005 to 110.291
Pennsylvania	Pa. Stat., Tit. 62, secs. 2043.1 to 2043.30
Rhode Island	Gen. Laws 1956, secs. 15-11-1 to 15-11-32
South Carolina	S.C., secs. 20-311 to 20-340
South Dakota	S.D. Code 1939, sec. 25.9
Tennessee	Tenn. Code Ann. 1955, secs. 36-901 to 36-929
Texas	Tex. Stat. Ann., sec. 2328b-4
Utah	Utah Code Ann. 1953, secs. 77-61a-1 to 77-61a-39
Vermont	V.S.A., Tit. 15, secs. 385 et seq.
Virginia	Va. Code 1950, secs. 20-88.12 to 20-88.31
Washington	R.C.W.A., secs. 26.21.010 to 26.21.900
West Virginia	W.Va. Code Ann. 1961, secs. 48-9-1 to 48-9-42
Wisconsin	Wis. Stats. 1958, sec. 52-10
Wyoming	Wyo. Stat. 1957, secs. 20-77 to 20-104

SOURCE: N. Rodgers, MARYLAND EXTRADITION MANUAL Appendix 1 (1976).

Though the Commissioners were aware that "[t]he actual return of the obligor to the obligee's state is in nearly all cases useless,"(40) and that "[i]t is of little comfort to a needy family to say we will put the bread-winner in jail,"(41) they were also quick to note that "the threat of extradition is quite effective in the case of a shiftless and slippery obligor."(42) Therefore, the commissioners buttressed the civil remedies of the Reciprocal Support Act with language drafted to assure that spouses charged with the crime of failing to fulfill duties of support may, when circumstances warrant, be extradited from responding to initiating states.(43)

This language provides a criminal remedy that is "in addition to and not in substitution of the extradition laws."(44) Actually, the Reciprocal Support Act contemplates that "[p]rovisions for extradition of criminals not inconsistent with this Act apply to the demand,"(45)

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(40) Tentative Draft of Proposed 1957 Amendments to the Uniform Reciprocal Enforcement of Support Act As Amended, NCCUSL HANDBOOK: SIXTY-SIXTH MEETING, 267, 268-69 (1957).

(41) Report by the Committee on All Phases of the Subject Matter of Desertion and Non-Support, NCCUSL HANDBOOK: FIFTY-EIGHTH MEETING 306, 307 (1949).

(42) NCCUSL HANDBOOK: SIXTY-SIXTH CONFERENCE 269 (1957).

(43) Secs. 5-6.

(44) G. Pena, TEXAS EXTRADITION AND RENDITION PROCEDURE 4 (1974).

(45) Sec. 5, (text of 1968 Act).

thereby invoking and relying upon the machinery of the Extradition Act to accomplish the return.(46) The Reciprocal Support Act, however, has liberalized the application of this machinery in order to "relieve the extradition process from the narrow requirements that the person whose surrender is demanded must have been in the demanding state at the time of the commission of the crime and must have fled from justice therefrom;" -- requirements which "have been heretofor a constant stumbling block to the successful extradition of deserting bread-winners."(47)

4. Interstate Extradition of Persons of Unsound Mind

> The subject was first suggested to me by two very distressing experiences that I had some years ago in my own practice where persons of unsound mind... were in other states, and I felt then the great embarassment of being unable to resort to any legal process whereby they could be returned to the state of their own domicile.
>
> The underlying principle of the proposed enactment is that the place of domicile is ordinarily the place where the person can be dealt with in the best interests of everybody, including himself.
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> Commissioner Whitelock, NCCUSL HANDBOOK: TWENTY-FIFTH MEETING, 66-67 (1915).

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(46) G. Libby, B. Merrell & G. West, THE MAINE PROSECUTOR: THE EXTRADITION MANUAL 3 (1973).

(47) Uniform Reciprocal Enforcement of Support Act (As Amended): Commissioners' Prefatory Note, NCCUSL HANDBOOK: SIXTY-FIRST MEETING 291, 292-93 (1952).

Drafted "in behalf of the movement to remedy what was claimed to be a far-reaching and serious evil,"(48) and approved by the NCCUSL in 1916, the little known Uniform Act for the Extradition of Persons of Unsound Mind (hereinafter Persons of Unsound Mind Act), has since been adopted by nine states, see EXHIBIT V: States That Have Adopted The Uniform Act For Extradition Of Persons Of Unsound Mind.

EXHIBIT V

STATES THAT HAVE ADOPTED THE UNIFORM
ACT FOR EXTRADITION OF PERSONS OF UNSOUND MIND

STATE	STATUTE
Alaska	Alas. Stat. Ann. 1962, secs. 47.30.410 to 47.30.460
Illinois	Ill. Ann. Stat. 1954, Ch. 91 1/2. sec. 121 et seq.
Indiana	Ind. Code 1971, secs. 22-219 to 22-223
Louisiana	L.S.A., secs. 28:501 et seq.
Maryland	Md. Ann. Code 1957, Art. 42, secs. 23 to 28
South Dakota	S. D. Code 1939, sec. 27-18
Vermont	V.S.A., Tit. 18, sec. 9101 et seq.
Virginia	Va. Code 1950, secs. 37.1-172 to 37.1-178
Wisconsin	Wis. Stats. 1958, secs. 51.81 to 51.85

SOURCE: N. Rodgers, MARYLAND EXTRADITION MANUAL Appendix 1 (1976).

It applies to persons who are a) under detention by law in a mental institution, or b) adjudicated to be of unsound mind and in the control of a court of competent jurisdiction, or c) subject to detention at the conclusion of legal proceedings ther pending to have

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(48) NCCUSL HANDBOOK: TWENTY-FIFTH MEETING 116 (1915).

them declared of unsound mind.(49) "Flight" is defined to include involuntary as well as voluntary departures,(50) and persons of unsound mind within the terms of this act are subject to arrest, custody, and delivery over upon a governor's demand and the production of a legal document such as an order of commitment, decree, or other judicial process certified to be authentic and accompanied by an affidavit as to fugitive status.(51)

B. TRANSPORTS UNDER THE INTERSTATE COMPACTS

Founded in 1933, the CSG is "an extension of the States -- created and directed by them and supported through state appropriations." All fifty state governors and a legislator from each house and senate of the state legislatures are members of its governing board. An Executive Committee -- composed of governors and legislators and including delegates from the National Conference of Lieutenant Governors, National Association of Attorneys General, and the Conference of Chief Justices acts between meetings of the Governing Board. The National Governors' Conference, the National Conference of State Legislatures, and the other representative interstate

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(49) Sec. 3.

(50) Sec. 2.

(51) Sec. 4.

organizations are associated with the CSG.(52)

Improving cooperation among the states is a major purpose of the CSG, and for many years it has sponsored innovative legislative ideas conceived to solve problems facing state governments on a cooperative basis. Frequently these ideas involve interstate compacts. The CSG "has long assisted the States in developing and creating interstate compacts,"(53) and it has drafted a number of highly successful proposals for interstate compacts in the field of criminal justice. As a "joint agency of all the state governments"(54) and the framer of these compacts for interstate crime control, the construction given to their purpose and provisions by the CSG are "considered valuable aids," and the legislatures may be presumed to have adopted these compacts with the "same intent" evidenced by the CSG in its published reports and commentary "unless the language of the statute unambiguously indicates the contrary."(55)

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(52) CSG, 21 THE BOOK OF THE STATES 1976-77, at 559-60 (1976).

(53) Crihfield, Forward To CSG, INTERSTATE COMPACTS 1783-1970, at v (1971) [hereinafter cited as COMPACTS].

(54) CSG, Publications 1977.

(55) 2A J. Sutherland, STATUTES Sec. 48.11.

1. Interstate Transports of Parole and Probation Violators

> The prime purpose of both probation and parole is the protection of the community through the rehabilitation of those convicted of crime. The success of both procedures depends upon adequate control of those who are released and intelligent supervision while under care. Cases constantly arise where, due to the existence of a family in another state, better opportunities for employment there or similar reasons, rehabilitation of a parolee or a probationer can be facilitated by transfer to such other jurisdiction, but the rehabilitative value of such a move is often lost if the prisoner loses the supervision, advice and assistance he would have received had he stayed in the state of his imprisonment, and the protection of the community to which he goes is threatened by the presence of a former criminal who has been left to work out his own destiny unassisted and uncontrolled.
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> CSG, THE HANDBOOK OF INTERSTATE CRIME CONTROL 1 (rev. ed. 1966) [hereinafter CRIME CONTROL]

Early in this century the increasing use of the automobile and the convenient availability of other modern means of transportation resulted in larger and larger numbers of offenders being convicted of crimes in states far away from their homes. Efforts to cope with this problem ranged from the "sundown parole" -- a procedure whereby a sentence would be suspended if the offender left the state by sundown -- to informal "gentlemen's agreements" among some states for the supervision of released offenders. By the 1930s it became painfully evident that such stopgap measures were inadequate or worse, and that the great volume of movement of parolees and probationers across state lines required formal, enforceable agreements for their supervision

and control.(56)

The establishment of the Interstate Commission on Crime Control in 1934 (superseded by the CSG in 1942)(57) to prepare laws designed to improve law enforcement practices quickly led to the drafting of the Interstate Compact for the Supervision of Parolees and Probationers (hereinafter Parole and Probation Compact). All fifty states as well as Puerto Rico and the Virgin Islands are signatories, see EXHIBIT VI: Party States To The Interstate Compact For The Supervision Of Parolees and Probationers. Indeed for many years it could be said that: "Only two judicial documents have formal and practical application throughout all of our fifty states -- the Constitution of the United States and the Interstate Compact for the Supervision of Parolees and Probationers."(58)

The Parole and Probation Compact provides for states to assume certain responsibilities designed to effectively supervise probationers and parolees from other states and, in return, obtain supervision of their parolees and probationers placed in other states. According to its terms, any state must accept and supervise a parolee or probationer from any other state if he is a resident of or has family residing

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(56) CSG, CRIME CONTROL 1.

(57) Burkhart, Interstate Cooperation In Probation And Parole, 24 Fed. Probation and Parole 24, 27 (1960).

(58) Brendes, Interstate Supervision of Parole And Probation, 14 Crime and Delinquency 253,253 (1968) [hereinafter cited as Interstate Supervision].

EXHIBIT VI

PARTY STATES TO THE INTERSTATE COMPACT FOR THE SUPERVISION OF PAROLEES AND PROBATIONERS

STATE	STATUTE
Arizona	Ariz. Rev. Stat. 1956, sec. 31-461
Arkansas	Ark. Stat. 1947, secs. 43-2816 to 43-1817
California	Cal. Penal Code, sec. 11175 et seq.
Colorado	Colo. Rev. Stat. 1973, secs. 74-5-1 to 74-5-2
Connecticut	C.G.S.A., sec. 54-133
Delaware	Del. Code Ann. 1953, Tit. 11, sec. 7731 et seq.
Florida	Fla. Stat. Ann. 1941, sec. 949.07 et seq.
Georgia	Ga. Stat. 1957, secs. 27-2701a, 27-2702a
Kansas	K.S.A., secs. 22-4101 et seq.
Kentucky	Ky. Rev. Stat., sec. 439.560
Louisiana	L.S.A., sec. 15:574.14
Maine	Me. Rev. Stat. Ann., Tit. 34, sec. 1721 et seq.
Maryland	Md. Ann. Code 1957, Art. 41, secs. 129 to 131
Massachusetts	M.G.L.A., ch. 127, sec. 151A et seq.
Mississippi	Code 1942, sec. 4004.5
Montana	Mont. Rev. Code 1947, secs. 94-7901 to 94-7902
Nebraska	Neb. Rev. Stat. 1943, secs. 29-2637, 29-2638
Nevada	N.R.S., secs. 213.180 et seq.
New Hampshire	R.S.A., secs. 607:52 to 607:53
New Mexico	Comp. Laws 1953, secs. 41-20-8 to 41-20-10
New York	McKinney's Consol. Laws of N.Y. Ann., Corr. sec. 224,224a
North Carolina	N. C. Gen. Stat., secs. 148-65.1 to 148-65.2
North Dakota	N.D.C.C., secs. 12-56.01 to 12-56.02
Oklahoma	Okla. Stat. Ann., Tit. 57, secs. 347 et seq.
Oregon	Ore. Rev. Stat. 1973, secs. 144.610 to 144.620
Rhode Island	Gen. Laws 1956, secs. 13-9-4, 13-9-5
South Carolina	S.C., secs. 55-631, 55-632
South Dakota	S.D. Code 1939, sec. 23.62
Tennessee	Tenn. Code Ann. 1955, sec. 40-3626

Texas	Tex. Stat. Ann., C. Cr. Pr., sec. 42.11
Virginia	Va. Code 1950, secs. 53-288 to 53-290
Washington	R.C.W.A., sec. 9.95.270
West Virginia	W. Va. Code Ann. 1961, secs. 28-6-1 28-6-2
Wisconsin	Wis. Stats. 1958, secs. 57.13, 57.135, 57.14

SOURCE: N. Rodgers, MARYLAND EXTRADITION MANUAL Appendix 1 (1976).

within the receiving state and can obtain employment there.(59) If the parolee or probationer is not so qualified, the receiving state has a choice whether or not to accept him.(60) The receiving state agrees that it will supervise the parolee or probationer of the sending state by the same standards it uses for its own parolees or probationers.(61)

The sending state may revoke parole or probation and retake the parolee or probationer with a minimum of formality.(62) This does not mean, however, that the supposed violator has no right to due process, that it is legally permissible to retake him arbitrarily at will.

Of course, in a very real sense parole "is not an act of clemency, but a penological measure for the disciplinary treatment of prisoners who seem capable of rehabilitation outside of prison walls."(63)

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(59) Sec. 1(a).

(60) Sec. 1(b).

(61) Sec. 2.

(62) Sec. 3.

(63) Banks v. Cain, 345 Pa. 581,585, 28 A.2d 897 (1942); Annot. 143 A.L.R. 1486 (1943). Even more realistically parole merely "substitutes lesser punishment for that imposed by sentence. It changes one punishment known to the law for another and different punishment, also known to the law. In other words, it susbstitutes a less grade of punishment for that inflicted by the sentence pronounced upon conviction." Bishop v. State Board of Corrections, 16 Utah 478, 481, 52 P. 1090 (1898).

Traditional learning has it that the convict granted parole is not discharged but remains amenable to prison system rules and authority and serves what is left of his sentence by having his liberty restrained in a manner similar to that employed in the trusty system of prison discipline: ("trustees outside prison walls as it were").(64)

> The parole... does not suspend service or operate to shorten the term. While on parole the convict is bound to remain in the legal custody and under the control of the warden until the expiration of the term... While this is an amelioration of punishment, it is in legal effect imprisonment.(65)

Probation has been characterized similarly, as "indeed a punitive sanction."(66) The probationer is "a convict without bars,"(67) and all of the statutes are definite that the probationer remains subject to the jurisdiction of the court that placed him on probation,(68) and his status is that of being in "constructive confinement"(69) or "custody"(70).

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(64) Sellers v. Bridges, 153 Fla. 586,589, 15 So.2d 293 (1943); Annot., 148 A.L.R. 1243 (1944).

(65) Anderson v. Corall, 263 U.S. 193,196 (1923).

(66) Hicklin v. State, Wyo., 535 P.2d 743,753 (1975).

(67) Id.

(68) S. Rubin, THE LAW OF CRIMINAL CORRECTION 235 (2nd ed. 1973) [hereinafter cited as CRIMINAL CORRECTION].

(69) Hicklin, 535 P.2d at 753.

(70) Miller v. State, 200 Kan. 700,704, 438 P.2d 87 (1968).

But though a parolee or probationer is deemed to be still in the legal custody and under the control of official authority(71) as the result of "the exercise of that guardianship and power of discipline which is vested in the state,"(72) his liberty, albeit attended by a "sword of threat hanging over his head"(73) and conditions that "significantly restrain" his freedom "to do those things which in this country free men are entitled to do,"(74) is, nonetheless, liberty. "[H]is condition is very different from that of confinement in prison,"(75) and as he is not now behind steel bars but rather suffers "an authorized mode of ambulatory punishment,"(76) the parolee or probationer must be arrested to obtain an actual or naked physical custody.

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(71) Banks, 345 Pa. 581.

(72) State v. Peters, 43 Ohio St. 629,650, 4 N.E. 81 (1885).

(73) Hicklin, 535 P.2d at 753.

(74) Jones v. Cunningham, 371 U.S. 236,243 (1963).

(75) Morrissey v. Brewer, 408 U.S. 471,482 (1972).

(76) Korematsu v. U.S., 319 U.S. 432,435 (1943).

A parolee or probationer who violates the terms of a conditional release arranged through the Parole and Probation Compact is customarily arrested by officers of the receiving state pursuant to the receipt of a warrant issued by competent authorities in the sending state.(77) Opinion varies as to whether or not the receiving state can arrest a violator without first securing a warrant from the sending state. In some states a violator may be arrested at the direction or request of the sending state even though its official warrant has not yet been issued or arrived.(78) The attorney general of at least one state has ruled that an arrest may be made and the violator temporarily detained pending a report of the violation to the sending state.(79) Increasingly, however, those states in which an immediate arrest of a parole or probaton violator is possible have chosen as a matter of

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(77) Though the language of Section 1(3) of the Parole and Probation Compact seemingly indicates that it is the responsibility of the sending state to do its own arresting of those violators whom it wishes returned from a receiving state: "That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole" -- the courts have held otherwise. Cases collected in Opinion of the Attorney General of Florida, No. 061-130 (Aug. 11, 1961).

(78) Opinion of the Attorney General of Texas, No. WW-989 (Jan. 24, 1961), Opinion of the Attorney General of California, No. 61/155 (Dec. 27, 1961).

(79) Letter from Bruce Bennett, Attorney General of Arkansas, to W. P. Ball, Director, Board of Pardons (Jul. 11, 1957).

prudent policy to await a warrant from the receiving state before apprehending the violator.(80)

Even after he is taken into custody the parolee or probationer does not become "available for transport" automatically. In 1972 the United States Supreme Court held in the landmark case of Morrissey v. Brewer that a parolee's interest in remaining at liberty on parole is substantial enough to warrant protection by the Due Process clause of the Fourteenth Amendment.(81) A year later, the Supreme Court extended this protection to probationers by its decision in Gagnon v. Scarpelli.(82) Essentially, these cases held that revocation of parole or probation must involve two distinct hearings, and that the first of these, the preliminary hearing, must be given to the alleged violator (a) at or near the place of arrest, (b) as soon as possible after the arrest, (c) by someone who is basically impartial to the revocation, and (d) a written report must be made of the findings made at the hearing.

The first purpose of this hearing is to ascertain if there is probable cause to believe that a violation has occurred. The overall

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(80) Personal and telephone interviews with compact administrators.

(81) 408 U.S. 471.

(82) 411 U.S. 778.

goal is to safeguard the parolee's or probationer's interest in remaining in the community to which he was paroled or placed on probation and to prevent capricious, unwarranted removal and return to prison. If the preliminary hearing is concluded adversely to the violator, he may then be transported from the receiving to the sending state where the second hearing, a formal revocation hearing, is held.

The Probation and Parole Compact stipulates that "the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states party to this compact, without interference."(83) Provisions to the same effect appear in almost all of the subsequent interstate compacts dealing with other classes of prisoners that must be transported across state lines.(84)

2. Interstate Transports of Inmates of Penal or Correctional Institutions

Federal and state institutions held 283,145 convicted offenders at

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(83) Sec. 4.

(84) See, e.g., Art. V(a) of the Western, New England, and Interstate Corrections Compact, Art. VI(a) of the Interstate Compact on Mentally Disordered Offenders, Sec. 6(c) of the Interstate Furlough Compact, Art. IV(a), V(a), and VII(c) of the Interstate Compact on Juveniles, and Art. VI of the Interstate Compact on Mental Health.

the close of 1976, a record number.(85) Of these inmates, 265,674 were serving maximum sentences of more than a year, also an all time high.(86) Given the size of this population, it is not surprising that many convicted offenders will be transported from one state or jurisdiction to another at some time during their period of incarceration. Commonly, these transports will be undertaken to try the offender in another state or to transfer him to facilities more suited to his needs.

a. To Stand Trial

> The party states find that charges outstanding against a prisoner, detainers based on untried indictments, information or complaints, and difficulties in securing speedy trials of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.
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> Article I, Agreement on Detainers

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(85) U.S. Department of Justice, Prisoners in State and Federal Institutions: Advance Report, NATIONAL PRISONER STATISTICS BULLETIN, No. SD-NPS-PSF-6A (Mar. 1977).

(86) Id.

A detainer is in essence a hold order. The detainer notifies prison authorities that an inmate incarcerated in their institution is wanted elsewhere in connection with a crime,(87) and it requests that the law enforcement officials desiring custody be forewarned of the inmate's release date so that they can arrange to pick him up.(88) The detainer may be a copy of an arrest warrant, or indictment or commitment order, or simply a letter or note sent to the prison by a prosecutor, court, sheriff, police chief, parole board, or any other official empowered to take people into custody.(89)

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(87) When interstate detainers are involved the inmate usually is wanted for one of four reasons: a) he has already been convicted in the demanding state, but has not yet served the sentence imposed, b) he is wanted in the demanding state as a parole violator, c) he is charged with an offense for which he has not yet been tried in the demanding state, d) he is charged with another offense in the state of incarceration. By far, most detainers are of the third type, which are filed because of untried charges in the demanding state. Meyer, Effective Utilization Of Criminal Detainer Procedures, 61 Iowa L. Rev. 659, 660 (1976) [hereinafter cited as Detainer Procedures]. The incidence of interstate detainers relating to criminal charges is difficult to determine. A study of detainers in Massachusetts revealed that 17 percent of all detainers were filed by out-of-state agencies; a percentage thought "perhaps not as great as might be expected". Dauber, Reforming The Detainer System: A Case Study, 7 Crim. L. Bull. 669,687 (1971) [hereinafter cited as Case-Study].

(88) Note, Detainers And The Correctional Process, 1966 Wash. U.L.Q. 417,417.

(89) Dauber, Case Study 670.

Though the detainer "serves its primary function efficiently: upon the termination of one sentence, prisoners are made available to the authority placing the detainer," it also serves other less desirable functions "as well and as efficiently,"(90) and "the lack of specificity as to the form of a detainer, questions concerning who may file it, and on what charges, have created a multitude of problems for the criminal justice system."(91) Some claim that these problems "more than offset" all the benefits of detainers "in eventually bringing to trial certain convicts held in the prisons of other jurisdictions".(92) Eminent and knowledgeable critics have charged that detainers are subject to abuse and can have many inequitable and harmful consequences. In the forceful words of Judge Sobeloff in Pitts v. North Carolina:

> Detainers, informal aids in interstate and intrastate criminal administration, often produce serious adverse side-effects. The very informality is one source of the difficulty. Requests to an imprisoning jurisdiction to detain a person upon his release so that another jurisdiction may

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(90) Tuttle, Catch 2254: Federal Jurisdiction And Interstate Detainers, 32 U. Pitt. L. Rev. 489, 491 (1971).

(91) Dauber, Case Study 670.

(92) Note, The Interstate Criminal Detainer And The Sixth Amendment, 23 Ark. L. Rev. 634,634 (1970).

> prosecute or incarcerate him may be filed groundlessly, or even in bad faith; as suspected by the appellant in this case. The accusation in a detainer need not be proved; no judicial officer is involved in issuing a detainer. As often happens, the result of the then unestablished charge upon which the detainer in this case rested was that the detainee was seriously hampered in his quest for a parole or commutation... In addition to restricting parole and commutation eligibility, detainers often bar prisoners from privileges, such as serving as prison trustees. Most importantly, perhaps, detainers may seriously handicap rehabilitative efforts.... Since it is estimated that as many as one-half of the detainers lodged are never pursued by the requesting authority...the inherent uncertainty of a detainee's future interferes with the development by prison authorities of an effective rehabilitation program and a proper attitude of the prisoner towards it... (93) (citations omitted)

This scathing indictment of detainers is one with which many would agree.

Finally, though detainers are usually honored as a matter of comity between sovereigns, inevitably difficulties are exacerbated when the charge underlying a detainer lodged against a prison inmate is pending in the criminal justice system of a different state or of the United States. One state cannot compel another state to deliver up a prison inmate for prosecution. Nor can a state demand that the federal government grant temporary custody of a federal prisoner to state

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(93) 395 F.2d 182, 187-188 (4th Cir. 1968).

officers, so that he may be brought to trial in state court. And a federal court cannot require a state to give up custody of a state prisoner in order that he may be tried for a federal offense.(94)

In an effort to solve many of the problems associated with the use of the detainer, the CSG promulgated the Interstate Agreement on Detainers in 1957 (hereinafter Detainers Agreement). The Detainers Agreement, which "shall be liberally construed so as to effectuate its purposes,"(95) provides for a mandatory dispostion of interstate detainers. It has been adopted by forty-four states, the District of Columbia, and the United States, see EXHIBIT VII: Party States To the Interstate Agreement On Detainers.(96)

When a detainer is filed against any inmate, prison officials must immediately notify the inmate and inform him of his rights regarding

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(94) Cases collected in Yackle, Taking Stock of Detainer Statutes, 8 Loy. L.A.L. Rev. 88, 96 (1975).

(95) Art. IX.

(96) Its force and effect, however, reaches even beyond those jurisdictions. Though both the sending and the receiving states must have enacted the agreement before it becomes operative between them, at least one state, South Carolina, has applied the policy of the agreement to all states regardless of whether they have adopted it. If a state which has filed a detainer against a South Carolina inmate, does not attempt to obtain the inmate for trial within 180 days after his request, the detainer is striken from the inmate's records and returned to the sender. Memorandum of the Attorney General of South Carolina (Mar. 6, 1968), cited in Wexler & Hershey, Criminal Detainers In A Nutshell, 7 Crim. L. Bull. 753, 757, n.27 (1971).

EXHIBIT VII

PARTY STATES TO THE INTERSTATE AGREEMENT ON DETAINERS

STATE	STATUTE
Arizona	Ariz.Rev.Stat. 1956, sec.31-481
Arkansas	Ark. Stat. 1947, secs. 43-3201 et seq.
California	Cal. Penal Code, sec. 1389
Colorado	Colo. Rev. Stat. 1973, secs. 24-60-501 to 24-60-507
Connecticut	C.G.S.A., secs. 54-186 to 54-192
Delaware	Del. Code Ann. 1953, Tit. 25, sec. 2540
District of Columbia	84 Stat. 1397 to 1403 (1970)
Florida	Fla. Stat. Ann. 1941, sec. 941.45 et seq.
Georgia	342 Stat. 938 (1972)
Hawaii	Act 160, Supp. Ch. 250A (1965)
Idaho	Idaho Code 1947, secs. 19-5001 to 19-5008
Illinois	Ill. Ann. Stat., Tit. 38, sec. 1003-8-9 et seq.
Indiana	Ind. Code 1971, sec. 35.2.1-3-4
Iowa	Iowa Code Ann. 1947, sec. 759A-1 et seq.
Kansas	K.S.A., secs. 22-4401 et seq.
Kentucky	Ky. Rev. Stat., secs. 440.150 to 440.420
Maine	Me. Rev. Stat. Ann., Tit. 34, secs. 1411 to 1426
Maryland	Md. Ann. Code 1957, Art. 27, sec. 616A-R
Massachusetts	M.G.L.A., ch. 276, app. secs. 1-1 to 1-8
Michigan	Mich. Comp. Laws 1970, secs. 780.601 to 780.608
Minnesota	Minn. Stat. Ann. 1959, secs. 629.01 to 629.29
Missouri	Mo. Rev. Stat. 1969, secs. 222.160 to 222.220 (1973 Supp.)
Montana	Mont. Rev. Code 1947, secs. 95.3131 to 95.3136
Nebraska	Neb. Rev. Stat. 1943, sec 29-759 (1963 Cum.Supp.)
Nevada	N.R.S., secs. 178.620 to 178.640
New Hampshire	Rev. Stat. Ann., sec. 606-A:1
New Jersey	N.J.S.A. 1952, secs. 2A:159A-1 to 2A:159A-15
New Mexico	Comp. Laws 1953, sec. 41-20-19
New York	N.Y. Crim. Proc. Law, sec. 580.20
North Carolina	N.C. Gen. Stat., secs. 148-89 to 148-95
North Dakota	N.D.C.C., ch. 29-34
Ohio	Ohio Rev. Code 1965, secs. 2963.30 to 2963.35
Oregon	Ore. Rev. Stat. 1973, sec. 135.775
Pennsylvania	Pa. Stat., Tit. 19, sec. 1431 to 1438
South Carolina	Code of Laws of S.C., secs. 17-221 to 17-229
South Dakota	S.D.C. 1939, secs. 23-24A-1 to 23-24A-34
Tennessee	Tenn. Code Ann. 1955, sec. 40-3901

Texas	Tex. C. Cr.Pr., sec. 51.14
Utah	Utah Code Ann. 1953, secs. 77-65-4 to 77-65-11
Vermont	V.S.A., Tit. 28, sec. 1301 et seq.
Virginia	Va. Code 1950, sec. 53-304.1
Washington	R.C.W.A., sec. 10.10.1
West Virginia	W. Va. Code Ann. 1961, secs. 62-14-1 to 62-14-7
Wisconsin	Wis. Stats. 1958, sec. 967.05
Wyoming	Wyo. Stat. 1957, secs. 7-408.9 to 7-408.15
United States	18 U.S.C. (appendix) (1970)

SOURCE: N. Rodgers, MARYLAND EXTRADITION MANUAL Appendix III (1976).

the disposition of the detainer.(97) He may then request trial on the charges upon which the detainer is based.(98) By making this request, the inmate simultaneously consents to be transported to the receiving state for trial, to be returned to the sending state to complete his original sentence, and then to be taken (again without any formalities of extradition) to the receiving state to serve any new sentence imposed.(99) Any request for trial is forwarded by prison officials to the prosecutor filing the detainer.(100) The prosecutor then has 180 days in which to bring the inmate to trial on the charges which formed the basis of the detainer.(101) While the inmate is in the receiving state for trial upon one set of charges, all charges pending against him in that state upon which detainers have been filed may and must be tried, thereby preventing repeated trips to the state.(102)

Prosecutors can also initiate the process by requesting the inmate's presence through the appropriate officials in the sending state who must deliver him up unless the governor of the sending state

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(97) Art. III(c).

(98) Art. III(a).

(99) Art. III(e).

(100) Art. III(b).

(101) Art. III(a).

(102) Art. III(d).

disapproves the request within 30 days of its receipt.(103) Trial must be commenced by the receiving state within 120 days after custody is obtained of the inmate unless good cause is shown in open court.(104)

If the receiving state either refuses or fails to accept delivery of the inmate, or if trial is not timely commenced, then the receiving state court must dismiss the indictment, information, or complaint with prejudice.(105) Furthermore, any detainer based upon the charge is nullified.(106) Thus prosecution is cut-off altogether if the receiving state fails to comply with the mandatory terms of the agreement.

As the Detainers Agreement is directed towards an accused who has previously been found guilty of an offense upon verdict or plea in a criminal proceeding, and as the court having jurisdiction of the case has a) formally pronounced its judgement awarding the punishment inflicted and declaring to the convict the personal consequences of his

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(103) Art. IV(a).

(104) Art. IV(c).

(105) Art. III(d), Art. IV(e).

(106) Art. V(c).

guilt and b) directed by warrant or mittimus that he be delivered to a penal or correctional institution to serve a term of imprisonment, there can be no reasonable doubt that the accused is presently held in custody as provided by law. Unlike the Parole and Probation Compact whose subjects have achieved at least a "limited and conditional personal liberty,"(107) the Detainer's Agreement which deals only with incarcerated offenders, need make no provision at all for the imposition of custody via an arrest so that the accused may be made available for transport. He has been made a prisoner long before.

The Detainer's Agreement is concerned only with the transfer and maintenance of custody so that arrangements may be made to bring the inmate to trial. Thus it stipulates that when an inmate requests a final disposition of an out-of-state detainer lodged against him or when a prosecutor desires to return an inmate incarcerated in another state for trial, "the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had."(108) While he is in the "temporary custody" of the receiving state, "the inmate may be fairly characterized as being

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(107) People v. Andre, 37 Cal. App. 3d 516,519,112 Ca. Rptr. 438(1974).

(108) Art. V(a).

`on loan' to that state."(109) Further, the sending state offers temporary custody "only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction."(110) For all other purposes, the inmate "shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state."(111) In these circumstances, an attempted arrest by agents of the receiving or a third party state would be not only superfluous but inappropriate.

If the offer of temporary custody is accepted, the receiving state dispatches its escort officers to transport the inmate to the place of trial. On demand, the officers must produce their identification, evidence of their authority from the receiving state, and a certified copy of the indictment, information, or complaint upon which the prisoner is being brought to trial.(112)

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(109) Meyer, Detainer Procedures 670.

(110) Art. V(d).

(111) Art. V(g).

(112) Art. V(b).

b. To More Suitable Facilities

> The party States, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party States to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this Compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.
>
> Article I, Interstate Corrections Compact

State officials have worked for many years to establish legal machinery to permit corrections administrators to transfer convicted offenders to institutions in other states.(113) Interstate corrections arrangements have been sought for a number of reasons. First, though it has long been acknowledged that not all offenders are alike, hard pressed state legislatures have been unable to allocate the funds necessary for specialized and diversified programs to benefit such minority treatment categories of prisoners as the criminally insane and

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(113) CSG, CRIME CONTROL 48.

the mentally retarded. The pooling and cooperative utilization of resources, made possible through interstate corrections arrangements, can lower the prohibitively high per capita expense that must be incurred by one state alone in attempting to provide something more than just general "across-the-board" treatment, thereby promoting the development of an individualized approach to corrections that is frequently beyond the capabilities of any single state.(114)

The need for suitable institutions in which to confine female offenders is an analogous problem. Some states do not have the large number of female prisoners required to justify heavy investments in a state prison for women. States in this situation may prefer to use the institutions of another state.(115)

Interstate corrections arrangements are also attractive solutions to the difficult administrative and fiscal problems posed by the incarceration of violent offenders regarded as chronic threats to society, corrections personnel, and other inmates. Administratively

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(114) P. Lynn, Interstate Agreements for Corrections 1-4 (1971) (unpublished paper on file at the NSA headquarters office, 1250 Connecticut Avenue, N.W., Washington, D.C. 20036). [hereinafter cited as Corrections].

(115) CSG, CRIME CONTROL 48.

designated as a dangerous security risk and incarcerated within maximum security units that adjoin or are a part of the main facility, the presence of small numbers of violent offenders is most responsible for the elaborate security precautions of many prisons. These precautions often exceed by far the limited control measures necessary to confine the large majority of the inmate population and, further, they can be implemented and maintained only at an exorbitant cost in money, manpower, and material. Interstate corrections arrangements are an excellent means of gaining access to a variety of institutions distributed along a scaled range of security. Violent offenders can then be wholly segregated from the general inmate population and placed within a separate penal facility designed primarily for stringent restraint.(116)

As with parole and probation, the offender's need for the positive reinforcement of his family, friends, and community has been a powerful motivating force in the search for interstate corrections arrangements. Beneficial ties with familiar surroundings are crucial to the rehabilitation of the offender as he prepares to return to the free world. Whenever possible, transfers of inmates to facilities in

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(116) Lynn, Corrections 16.

closest proximity to the home should be encouraged. When the inmate's home is in another state, interstate corrections arrangements provide a feasible means of accomplishing this.(117)

Lastly, interstate corrections arrangements can be used to alleviate emergency situations such as sudden overcrowding, the need to break up hostile groups, or the destruction of state's facilities by fire or other causes.(118)

Several successful interstate corrections arrangements have been developed in recent decades. Beginning in 1941, New Hampshire regularly sent its female offenders sentenced to hard labor to the Vermont Women's Reformatory. These transfers were accomplished pursuant to legislative authorization and according to the terms of an administrative agreement that called for the payment of a per diem rate and other expenses by New Hampshire. Similar interstate corrections arrangements for female inmates also existed in the western states for some time. States that have participated in these arrangements over the years include Colorado, Nebraska, New Mexico, South Dakota, Utah, and Wyoming.(119)

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(117) CSG, CRIME CONTROL 48.

(118) Id., 50.

(119) Id., 48.

In 1958, the Western Governor's Conference drafted the Western Interstate Corrections Compacts (hereinafter Western Corrections Compact).(120) It is concerned with the "male or female offender who is under sentence to or confined in a prison or other correctional institution."(121) Institution is further defined as "any prison, reformatory, or other correctional facility... in which inmates may lawfully be confined."(122) The provisions of this compact a) permit signatory states to contract with each other for the confinement of inmates,(123) b) guarantee that the sending state may visit its prisoners, remove them, or inspect the facilities in which they are confined by the receiving state,(124) c) require the receiving state to treat the prisoners of the sending state equally with its own prisoners (125) and to make regular reports to the sending state of the conduct of prisoners transferred to its facilities,(126) d) stipulate that the prisoners transferred retain all legal rights, including hearing

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(120) Until recently, the Governor's Conferences were integral parts -- rather than associate organizations -- of the CSG.

(121) Art. II(d).

(122) Art. II(e).

(123) Art. III(a).

(124) Art. IV(b)-(c).

(125) Art. IV(e).

(126) Art. IV(d).

rights, and benefits they would have had if they had remained in the sending state,(127) and e) allow signatory states to jointly contribute to the costs of new facilities, each reserving a percent of the resulting capacity for their own use.(128)

The Western Corrections Compact has been adopted by Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, and Guam.(129) However, its influence has extended far beyond the Western Region. For example, using the Western Corrections Compact as their model, the New England Governor's Conference of State Corrections Administrators prepared a nearly duplicate compact just one year later in 1959. (130) This Compact has been adopted by the six New England States: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.(131)

The provisions of the Interstate Compact on the Mentally Disordered Offender (hereinafter Mentally Disordered Offender Compact), developed in 1965 at the direction of the Midwestern Governor's Conference, largely follow those of the Western Corrections Compact. However, this Compact is specially oriented towards the treatment needs

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(127) Art. IV(e)-(f).

(128) Art. III(b).

(129) CSG, COMPACTS 17.

(130) CSG, CRIME CONTROL 49.

(131) CSG, COMPACTS 16.

of a) persons who have committed or are charged with having committed a criminal act but who are not subject to conviction because of mental illness, and b) persons under sentence who become mentally ill while in prison.(132) The Mentally Disordered Offender Compact has been adopted by Delaware, Illinois, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, and West Virginia.(133)

Drafted in 1968 by the CSG, the Interstate Corrections Compact is the most recent of these efforts to establish legal machinery for interstate corrections arrangements. Again, its provisions are, with insignificant exceptions, "almost identical" to those of the Western Interstate Compact.(134) To date, this compact has been adopted by Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Missouri, Nebraska, Nevada, New Jersey, Pennsylvania, South Carolina, Tennessee, and Vermont.(135)

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(132) CSG, Interstate Compact For The Mentally Disordered Offender C-3, reprinted from 26 SUGGESTED STATE LEGISLATION (1967).

(133) CSG, COMPACTS 21.

(134) CSG, Interstate Corrections Compact 9, reprinted from 31 SUGGESTED STATE LEGISLATION (1972).

(135) Telephone interview with Mr. Brevard Crihfield, CSG, Iron Works Pike, Lexington, Kentucky (Oct. 12, 1977) [hereinafter Crihfield Interview].

As with the Detainers Agreement, the person to be transported under the provisions of these compacts will have been already deprived of his liberty and incarcerated pursuant to the dispositiom of a criminal proceeding. Once more it is apparent that a further arrest is unnecessary, a redundant exercise of form only, and again the operative concern is the transfer and maintenance of a custody previously obtained. Thus the Western, New England, and Interstate Corrections Compacts and the Mentally Disordered Offender Compact all require that contracts signed among the party states for the confinement of inmates or care and treatment of mentally disordered offenders on behalf of a sending state in institutions situated within receiving states shall provide for the "delivery and retaking of such persons."(136)

The Western, New England, Interstate Corrections Compacts, and the Mentally Disordered Offender Compact also contain instructions mandating a liberal construction of their provisions.(137)

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(136) Art. III(a) of all compacts.

(137) Art. X of the Western, New England, and Interstate Corrections Compacts: Art. XI of the Mentally Disordered Offender Compact.

c. To Deliver and Retake Furloughees

> Within the last few years, some correctional departments... have gone beyond their authorization to furlough within state borders by granting temporary leaves for inmates to visit other States. The lack of jurisdictional authority has placed the increasing number of departments, furloughing on an interstate basis, in a tenuous and potentially perilous legal position, particularly in the event an inmate absconds or commits a criminal offense in another State. Given the increasing mobility of criminals and, by extension, inmate populations, many correctional administrators would like to retain the flexibility to furlough interstate, particularly to meet emergency situations. However, there is reluctance to continue such a policy in the absence of statutory authorization.
>
> CSG, Preface to Interstate Furlough Compact

The Interstate Furlough Compact (hereinafter Furlough Compact), is the most recent of the many compacts for interstate crime control. Developed by the CSG, the final draft was approved by the Association of State Correctional Administrators in August 1975. A large number of states are expected to adopt The Furlough Compact in the near future. (138) It provides that sending states may furlough qualifying inmates without escort to receiving states for a number of purposes, for example, to contact a prospective employer or to secure a suitable residence for use upon discharge or parole.(139) Inmates who

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(138) Crihfield interview.

(139) Sec. 3(a).

are ineligible for unescorted furloughs may be furloughed under guard in the event of verified personal or medical emergencies.(140)

A furlough may not exceed a stipulated number of days, unless an extension is granted by the sending state with the consent of the receiving state.(141) A furlough may be terminated by either state for cause. If this should occur, the inmate must be given reasonable opportunity to obtain written statements of witnesses and other documentation which may be of assistance to him in subsequent disciplinary proceedings.(142)

Before a furlough may be authorized, an inmate must sign a written waiver of extradition waiving his right to be extradited from any state to which he is furloughed or from any state where be might be apprehended.(143) Inmates on escorted furlough shall be transported under the "guard and jurisdiction of an authorized person from the sending state and shall be under the continuous supervision of that person."(144) Procedures for retaking furloughees from the receiving

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(140) Sec. 3(c).

(141) Sec. 3(b) & (c) (2).

(142) Sec. 3(e).

(143) Sec. 3(d).

(144) Sec. 3(c).

state closely follow those established under the Probation and Parole Compact. However, the Furlough Compact states explicitly that though the right and responsibility for retaking a delinquent furloughee is that of the sending state,(145) "nothing contained herein shall prevent the receiving state from assisting the sending state toward retaking and returning the furloughee"(146) and that "[a]ll costs in connection therewith shall be chargeable to the sending state."(147)

The "authorized person" of either the sending state or the receiving state "acting as agent for the sending state" will be permitted to transport delinquent furloughees being retaken through any or all states party to the Furlough Compact.(148) A preliminary Morrissey type hearing is not required before the transport may begin because, unlike the parolee or probationer, an inmate on furlough acquires no rights of freedom.(149) Finally, contracts between party states for the furlough of inmates may provide for the delivery and retaking of furloughees.(150)

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(145) Sec. 6(f).

(146) Id.

(147) Id.

(148) Sec. 6(c).

(149) S. Rubin, CRIMINAL CORRECTIONS 344.

(150) Sec. 5.

3. Interstate Transports of Juveniles

> That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of non-delinquent juveniles who have run away from home, and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively.... It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.
>
> Article I, Interstate Compact on Juveniles

Interstate juvenile control is attended by unique difficulties. The carefully guarded distinction between criminal activity and delinquency has in many instances rendered the home state powerless to oversee or reach juveniles who have crossed its borders. Most juveniles cannot be supervised under the Parole and Probation Compact

because, even as delinquents, they are not "convicted of a crime." In like manner, the Extradition Act usually cannot be used to compel the return of absconding or escaping juvenile delinquents, for it is applicable to only persons accused of crimes.(151)

There is also the problem of runaway but nondelinquent children. Though the home state may act as parens patriae in seeking their return, this does not of itself provide the means of getting them back. Lastly, it appears that some maladjusted juveniles can be treated best in specialized facilities that because of cost or scarce professional staff are beyond the capability of the home state alone to establish and operate.(152)

The Interstate Compact on Juveniles (hereinafter Juvenile Compact), is a tool that can be used by the home state in cooperation with other party states to break this impasse. Drafted by the CSG in 1954 and approved at a special interstate conference in 1955, the Juvenile Compact has since been adopted by all the states, the District

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(151) These problems are discussed in Wendall, The Interstate Compact On Juveniles: Development And Operation, 8 J. Pub. L. 524, 525-28 (1959)[hereinafter cited as Compact On Juveniles], and Note, Interstate Placement Of Juveniles, 3 Colum. J. L. Soc. Prob. 171, 172-74 (1967).

(152) Wendall, Compact on Juveniles 527-28.

of Columbia, Guam, Puerto Rico, and American Samoa, see EXHIBIT VIII: Party States To The Interstate Compact On Juveniles.
Utilizing a method of operation and procedures very similar to those established by the Parole and Probation Compact,(153) it supplies an explicit legal basis for the out-of-state supervision of a delinquent juvenile who is eligible for parole or probation and should be sent to some state other than where he got in trouble.(154) The Juvenile Compact provides that party states may enter into general supplementary agreements for the purpose of establishing or maintaining specialized services or facilities for juveniles on a cooperative basis.(155) Most importantly, several articles of the Juvenile Compact have been carefully tailored to provide for the return of juveniles in differing legal circumstances.

Articles IV and V of the Juvenile Compact follow the procedures of the Extradition Act albeit in much more simplified form and with such modifications as were necessary to preserve the noncriminal nature of the proceedings.(156) These articles are intended to be used when there is a possibility that the validity of a return will be challenged. Article IV applies to nondelinquent runaways, Article V to delinquents

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(153) Id., 528.

(154) Art. VII.

(155) Art. X.

(156) Wendall, Compact On Juveniles 531.

EXHIBIT VIII

PARTY STATES TO THE INTERSTATE COMPACT ON JUVENILES

STATE	STATUTE
Alabama	Code of Ala., Tit. 42, secs. 27 and 28
Alaska	Alas. Stat. Ann. 1962, secs. 47.15.010 to 47.15.080
Arizona	Ariz. Rev. Stat. 1956, secs. 8-361 to 8-367
Arkansas	Ark. Stat. 1947, secs. 45-301 to 45-307
California	Cal. Welfare & Institutions Code, secs. 1300 to 1308
Colorado	Colo. Rev. Stat. 1963, secs. 54 to 132
Connecticut	C.G.S.A., secs. 17-75 to 17-81
Delaware	Del. Code Ann. 1953, Tit. 31, sec. 5201 et seq.
District of Columbia	D. C. Code, sec. 32-1101 et seq.
Florida	Fla. Stat. Ann. 1941, secs. 39.25 to 39.31
Hawaii	Haw. Rev. Stat. 83-75-76
Idaho	Idaho Code 1947, secs. 16-1901 to 16-1910
Illinois	Ill. Ann. Stat. 1954, ch. 23, sec. 2591
Indiana	Ind. Code 1971, sec. 31-5-3-1 to 31-5-3-9
Iowa	Iowa Code Ann. 1946, secs. 231.14 to 231.15
Kansas	K.S.A., sec. 38-1001 et seq.
Kentucky	Ky. Rev. Stat. 1963, sec. 208.610
Louisiana	L.S.A. 46:1451
Maine	Me. Rev. Stat. Ann., Tit. 27A. secs. 21 to 22
Maryland	Md. Ann. Code 1957, Art. 41, secs. 387 to 395
Massachusetts	M.G.L.A., ch. 119, app. secs. 1-1 to 1-7
Michigan	Mich. Comp. Laws 1970, sec. 3-701
Minnesota	Minn. Stat. Ann. 1959, secs. 260.51 to 260.57
Mississippi	Miss. Code Ann., 7186, secs. 1 to 10
Missouri	Mo. Rev. Stat. 1969, secs. 210.570 to 210.600
Montana	Mont. Rev. Code 1947, sec. 10-1001
Nebraska	Neb. Rev. Stat., 1969 Supp., secs. 43-1008 to 43-1009
Nevada	N.R.S., sec. 214.010
New Hampshire	R.S.A., ch. 169A
New Jersey	N.J.S.A. 1952, secs. 9:23-1 to 9:23-4
New York	Unconsol. Laws, secs. 1801 to 1806, Code of Crim. Proc., sec. 913e
North Carolina	N.C. Gen. Stat., sec. 110-58 et seq.
North Dakota	N.D. Cent. Code, sec. 27-22
Ohio	Ohio Rev. Code, secs. 2151.56 to 2151.61
Oklahoma	Okla. Stat. Ann., 1967 Supp., Tit. 10, secs. 531 to 537
Oregon	Ore. Rev. Stat. 1973, ch. 417
Pennsylvania	Pa. Stat., Tit. 11, secs. 881 to 885
Rhode Island	Gen. Laws 1956, sec. 14-16-1
South Carolina	Code Laws of S.C., Tit. 55, secs. 55-65
South Dakota	S.D. Code 1939, ch. 26-12

Tennessee	Tenn. Code Ann. 1955, secs. 37-801 to 37-806
Texas	Tex. Stat. Ann., Art. 5143e
Utah	Utah Code Ann. 1953, secs. 55-12-1 to 55-12-6
Vermont	V.S.A., Tit. 13, secs. 551 et seq.
Virginia	Va. Code 1950, secs. 16.6 to 213.1
Washington	R.C.W.A., sec. 13.24.010
West Virginia	W. Va. Code Ann. 1961, secs. 4904 (109) to (117)
Wisconsin	Wis. Stats, 1958, secs. 48.991 to 48.997
Wyoming	Wyo. Stat. 1957, sec. 14-52.10

SOURCE: N. Rodgers, MARYLAND EXTRADITION MANUAL Appendix I (1976).

who have escaped from institutional custody or absconded from parole or probation supervision. Their procedures are similar. Upon receipt of a requisition in the asylum state, the responsible court or executive authority shall issue an order to take the juvenile into custody. Upon being taken into custody, the juvenile must be taken immediately before a court with juvenile jurisdiction and informed of the demand for his return. The judge will appoint counsel or guardian ad litem for him. If the requisition for return is found to be in order, the judge delivers the juvenile over to the officer designated to receive and transport him to the demanding state. Alternatively, a juvenile may be taken into custody and held pending the receipt of a requisition upon reasonable information that he is a runaway or escapee or absconder.

Article VI is also drafted after the Extradition Act. It provides for the voluntary return of both delinquent and nondelinquent juveniles taken into custody without a requisition. The juvenile is brought before a judge who must inform the juvenile, in the presence of counsel or guardian ad litem, of his rights. If the juvenile consents to his immediate return, the judge either allows the juvenile to return unaccompanied in accordance with the request of the state to which he is being returned or he orders the juvenile to be delivered to the officers of the state from which he absconded, escaped or ran away.

Article VII of the Juvenile Compact provides a method by which delinquent juveniles who have been placed on parole or probation or any other kind of authorized conditional release may be sent to other

states for supervision. The return and custody procedures established under this Article are the same as those under the Parole and Probation Compact.

4. Interstate Transports of Mentally Ill or Mentally Deficient Persons

> The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them.
>
> Article I, Interstate Compact on Mental Health

> It was noted that a number of patients who committed criminal acts in one state recently had been released from institutions in other states or from federal institutions.
>
> CSG, Introductory Statement, Interstate Compact on Mental Health, (1969) revised and reprinted from SUGGESTED STATE LEGISLATION: PROGRAM FOR 1958, at 70.

The Interstate Compact on Mental Health (hereinafter Mental Health Compact) has been sponsored by the CSG since 1955 as an effective

response to "the very difficult problems of deportation of the non-resident mentally ill patient... a matter that has plagued the administration of state mental health programs for a long time - - both in terms of administrative cost to the state and the welfare of the patient."(157) States determined eligibility for institutionalization of the mentally ill or mentally deficient according to highly technical rules of residence or settlement which frequently made it impossible to establish any legal residence for a person who is mentally ill or deficient and possibly dangerous to himself or to society. A person afflicted with mental illness or deficiency was often unable to secure treatment anywhere. Other times, he could be shipped across country to a hospital in a state that was his legal residence but where he had no family or friends. Or it may happen that a mentally ill or deficient person received treatment and improved to the point that he could be discharged on convalescent leave to his family in another state but, nonetheless, he must be retained because of residence or settlement laws.(158)

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(157) CSG, Introductory Statement, Interstate Compact On Mental Health (1969), revised and reprinted from SUGGESTED STATE LEGISLATION: PROGRAM FOR 1958 at 70.

(158) Id.

As of July 1969, the Mental Health Compact has been ratified by the following states; Alaska, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.(159)

The Mental Health Compact assures that any party state will give care and treatment to any person physically present in that state who is in need of institutionalization by reason of mental illness or mental deficiency.(160) It provides interstate cooperative machinery for aftercare or supervision of patients on convalescent status or conditional release.(161) The Mental Health Compact also authorizes additional supplementary agreements between the party states for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis.(162)

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(159) Id., 71.

(160) Art. III(a).

(161) Art. IV.

(162) Art. XI.

The Mental Health Compact permits party states to transfer any patient to institutions in other states when clinical determinations indicate that such a transfer could result in improved care and treatment.(163) The sending state is normally responsible for the costs of these transports.(164)

The provisions of this compact "shall be liberally construed so as to effectuate the purposes thereof."(165)

C. THE MANDATES AND CAPTIS

The purposes, statutory bases, and manner of performance of current interstate prisoner transports are fully congruent -- indeed they are fully supportive of -- the implementation and operation of the CAPTIS pilot system. In turn, by reducing the costs of accomplishing these transports CAPTIS promises to advance the fundamental aims of public policy sought to be achieved by lawmakers when they enacted the uniform laws and interstate compacts that comprise the legislation for

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(163) Art. III(b).

(164) Art. VII(b).

(165) Art. XIV.

interstate crime control now controlling the movement across state lines of fugitives, material witnesses, deserting spouses, parole and probation violators, inmates, juveniles, and the mentally ill. Each serves the other, and together, CAPTIS and these statutory mandates, the legislative materials and court decisions interpreting them, and the practices that have grown up in connection with their execution can do much to solve the problems of administering criminal justice within the context of our federal system of sovereignty and government.

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