

## Ga. Criminal Trial Practice § 2:23 (2019-2020 ed.)

Daniel's Georgia Criminal Trial Practice | December 2019 Update  
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### Part I. Arrest And Criminal Investigative Procedures

#### Chapter 2. Arrests

# § 2:23. Extradition of fugitives—The Uniform Criminal Extradition Act

The basic provision for the interstate extradition of fugitives from justice<sup>1</sup> is found in the Constitution of the United States, Article IV, Section 2, Paragraph 2:<sup>2</sup> “A Person charged in any State with Treason, Felony, or other Crime,<sup>3</sup> 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.” To implement this constitutional requirement, Georgia and most other states have enacted the Uniform Criminal Extradition Act,<sup>4</sup> while the federal government has enacted a similar statute.<sup>5</sup>

The Uniform Act places an affirmative constitutional duty on the governor of any state in which a fugitive is found to have him arrested and delivered up to the authorities of the state from which he fled.<sup>6</sup> By law, a demand for extradition must be in writing and must allege (except in cases arising under [O.C.G.A. § 17-13-25](#), discussed infra) that the accused was present in the demanding state at the time the alleged crime was committed,<sup>7</sup> and that he subsequently fled the jurisdiction.<sup>8</sup> The demand must be accompanied by a copy of an indictment against the accused, or by information supported by an affidavit in the state which has jurisdiction of the offense, or by a copy of an affidavit made before a magistrate of the demanding state, together with a copy of any warrant issued or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the governor of the demanding state that the accused has escaped from confinement or has broken the terms of his bail, probation, or parole. The indictment, affidavit or information must substantially charge the accused with having committed a crime under the law of the demanding state, and be authenticated by the governor of that state.<sup>9</sup>

[O.C.G.A. § 17-13-26](#) provides that when a demand for extradition is made upon the governor, he may call upon any state prosecuting officer, including the Attorney General, to investigate the demand and report whether or not the accused ought to be delivered to the demanding state.<sup>10</sup>

[O.C.G.A. § 17-13-24](#) provides that when a state wishes to have returned to that state a person charged with a crime in that state, but the accused is incarcerated in another state, the governor of the latter state may agree to extradite the prisoner, upon condition that, after he is tried in the demanding state, he be returned to the surrendering state to complete his sentence or to face pending criminal proceedings.<sup>11</sup>

[O.C.G.A. § 17-13-25](#) provides that this state may extradite, pursuant to the requirements of [O.C.G.A. § 17-13-23](#), supra, any person who, although not present in the demanding state at the time the alleged crime was committed, nonetheless committed an act from outside the demanding state which intentionally resulted in a crime being committed within the demanding state.<sup>12</sup>

In *Jenkins v. Garrison*,<sup>13</sup> an Alabama application for extradition noted that Alabama did not contend that the petitioner was present within the state when the crimes were committed. However, the Georgia rendition warrant granting the extradition request stated that the petitioner committed the crimes in Alabama and was a “fugitive from justice.” Although the warrant did not give the basis for its issuance, the warrant appeared to be issued pursuant to the mandatory terms of [O.C.G.A. § 17-13-23](#)

limiting extradition to a fugitive from justice found in another state, rather than pursuant to [O.C.G.A. § 17-13-25](#) which does not hinge on whether the accused was present in the requesting state when the crimes were committed. Because of this discrepancy and because there was no evidence that gubernatorial discretion was exercised pursuant to [O.C.G.A. § 17-13-25](#) when granting the rendition warrant, the court concluded that habeas corpus relief should have been granted.

When the governor of a state decides to extradite a fugitive to a demanding state, he must issue an arrest warrant, which must recite the facts necessary to the validity of its issuance.<sup>14</sup> The warrant must authorize the peace officers to whom it is directed to arrest the fugitive and, subject to the provisions of [O.C.G.A. §§ 17-13-20 et seq.](#), discussed in this section, to deliver him up to the “duly authorized agent of the demanding state.”<sup>15</sup> The arresting officer is deemed to have the same authority to command assistance in arresting the fugitive as he has in any criminal process situation.<sup>16</sup>

[O.C.G.A. § 17-13-30](#) provides that before a fugitive is delivered up to the demanding state, he must first be brought before a judge of a court of record of the surrendering state. The judge must inform the accused of (1) “the demand made for his surrender,” (2) the crime upon which the demand is based, and (3) his right to counsel.

Should the accused wish to contest the legality of the arrest, a reasonable time is allotted (by the judge of the surrendering state) to allow the accused to petition for habeas corpus relief. If a writ of habeas corpus is applied for, notice thereof shall be given to the prosecuting officer of the county where the arrest was made. The district attorney must answer and defend the habeas corpus unless the governor appoints the attorney general.<sup>17</sup>

In *Michigan v. Doran*,<sup>18</sup> the United States Supreme Court held that once the governor of a state has granted extradition, a court of that state, considering release on habeas corpus, can do no more than decide (1) whether the extradition documents on their face are in order, (2) whether the petitioner has been charged with a crime in the demanding state,<sup>19</sup> (3) whether the petitioner is the person named in the demand for extradition,<sup>20</sup> and (4) it may be necessary to determine whether the petitioner is a fugitive.<sup>21</sup> In the 1998 case of *St. Lawrence v. Bartley*,<sup>22</sup> the Georgia Supreme Court affirmed the granting of a petition for habeas corpus where the demand for extradition alleged that the petitioner was in the demanding state at the time of the alleged crime (see [O.C.G.A. § 17-13-23](#)). In this case, Bartley testified that she had not been in South Carolina since she was a toddler and was not a fugitive. Bartley also testified that her checks had been stolen from her and that the theft was reported to the police in Georgia. The court pointed out that although the warrant was prima facie evidence that Bartley had been in South Carolina, the state presented no other evidence that she was in South Carolina when the alleged crime was committed.

Once these requirements are met, any other defenses are to be decided in the demanding state.<sup>23</sup> The guilt or innocence of the accused has no relevance in a habeas corpus proceeding to contest extradition, unless it involves identification of the petitioner as the one charged with the offense<sup>24</sup> or one of the other three matters set out in *Doran*.

In *Oliver v. Barrett*,<sup>25</sup> the Georgia Supreme Court held that “the mental competency of a fugitive is only relevant insofar as it concerns his ability to assist counsel in ascertaining and preparing for the limited issues to be decided in an extradition hearing.”

Once the surrendering state makes an initial, prima facie showing that the extradition documents are in order,<sup>26</sup> the burden of proof is on the defendant to show how his arrest and detention is unlawful.<sup>27</sup> Thus, if the defendant contends he is not the person named in the governor's warrant, the burden is on him to show that he is not the person named.<sup>28</sup> It has been said that the purpose of an extradition proceeding is merely to determine whether there is probable cause to transfer a criminal suspect from one jurisdiction to another to stand trial.<sup>29</sup> However, it “is not appropriate for the habeas court to look behind the probable cause finding of the demanding state.”<sup>30</sup>

[O.C.G.A. § 17-13-32](#) provides that the officers of both the surrendering state and the demanding state may use the jails of the surrendering state, when necessary, to confine the fugitive while en route, provided that the officers show proof to the keepers of the jails that the prisoner is in fact a fugitive subject to pending extradition proceedings.

O.C.G.A. § 17-13-33 provides that “any credible person” may initiate the extradition process by swearing out a warrant that a crime has been committed in another state and that the accused has been charged with that crime. The accused may then be arrested and brought before a magistrate to answer the complaint.<sup>31</sup>

 O.C.G.A. § 17-13-34 provides that a peace officer or a private citizen may arrest a person without a warrant upon reasonable information that the accused is charged in another state with a crime punishable by death or imprisonment for a term greater than one year. The accused must be brought before a magistrate with all practicable speed, where the arresting party must make a complaint under oath setting out the grounds of the arrest; and the accused must be given an opportunity to answer.<sup>32</sup>

Where the magistrate finds that the person being held is the same person as the one who is charged with the alleged offense, and that he has fled from justice (except where O.C.G.A. § 17-13-25 is applicable), it is provided that the magistrate must, by warrant reciting the accusation, commit the accused to the county jail for up to 30 days, to permit an arrest of the accused under a warrant of the governor “on a requisition of the executive authority of the state” which has jurisdiction of the crime.<sup>33</sup> The magistrate may also extend the incarceration for 60 additional days if the accused was not arrested under such a governor's warrant after the initial 30-day period expires, or the magistrate may discharge the accused.<sup>34</sup>

 O.C.G.A. § 17-13-36 provides that an accused fugitive may be admitted to bail unless the crime with which he is charged is punishable by death or life imprisonment in the demanding state.<sup>35</sup>

O.C.G.A. § 17-13-39 provides that the governor, in his discretion, may surrender upon demand of the governor of another state any person found in this state, even though that person is incarcerated, on probation or parole, or is facing pending criminal charges in this state. The governor may condition the delivery of the prisoner upon such terms as he may stipulate, including the condition that the prisoner be returned to this state immediately after trial and before commencing the service of his sentence in the demanding state. No surrender of such a prisoner under this section is to be construed as a complete relinquishment of jurisdiction by the surrendering state over the prisoner. However, where the prisoner receives a sentence of death in the demanding state, that sentence may be carried out.

The governor may recall his warrant for the arrest of a fugitive or issue another warrant at any time.<sup>36</sup>

A person brought into Georgia pursuant to the Uniform Criminal Extradition Act is immune from service of process in civil actions arising out of the same facts as the criminal proceedings for which he was extradited, until he has been convicted, or, if acquitted, until he has had a reasonable opportunity to return to the state from which he was extradited.<sup>37</sup>

In *Palmer v. Dugger*,<sup>38</sup> the Eleventh Circuit held that an indigent who remains in custody while awaiting extradition must get credit when he is sentenced for the time when he was in custody.

O.C.G.A. § 17-13-46 provides that a person arrested pursuant to the Uniform Criminal Extradition Act may waive procedural requirements of the extradition proceedings and may consent in writing to return to the demanding state. The accused must execute such a waiver in the presence of a judge of any court of record within the surrendering state. Before the execution of the waiver becomes valid, the judge must inform the accused of his right to be issued a warrant of extradition and to petition for habeas corpus relief as provided in O.C.G.A. § 17-13-30, discussed supra. Where a waiver has been duly executed, it is filed with the governor, and the accused is delivered to the agent of the demanding state. However, these provisions do not limit the rights of the accused to return to the demanding state voluntarily and without formality and therefore they are not exclusive.

O.C.G.A. § 17-13-47 provides that nothing in the Uniform Criminal Extradition Act is to be construed as limiting the powers of the surrendering state to try a fugitive (for crimes committed in the surrendering state) who has been demanded by another state. Thus, it seems that the surrendering state may retain the fugitive and delay extradition until the proceedings in the surrendering state have been terminated or regain custody of the accused in order to have a trial, sentencing or punishment for any offense committed in the surrendering state.

O.C.G.A. § 17-13-48 provides that after a fugitive has been extradited, he may be tried in the demanding state for other crimes which he allegedly committed in that state as well as those crimes specified in the warrant of extradition.<sup>39</sup>

It has been held that there is no double jeopardy or collateral estoppel problem where a demand for extradition is rejected by the surrendering state, and a later demand based on the same criminal charge is accepted.<sup>40</sup> It has also been held that the right to challenge the legality of extradition is deemed to have been waived by the fugitive by a failure to petition for habeas corpus relief; the matter cannot be raised after extradition at the trial in the demanding state upon the substantive crime charged.<sup>41</sup>

Although an illegal arrest and extradition result in a civil rights violation actionable under  42 U.S.C.A. § 1983, it cannot be raised as a defense at the trial in the demanding state for the substantive crime charged.<sup>42</sup>

Finally, it must be remembered that a person can only be extradited for a criminal offense and never for the purpose of enforcing the collection of a debt or any private purpose whatsoever,<sup>43</sup> unless the failure to repay the debt also constitutes a crime in the demanding state.<sup>44</sup> See § 14:72, *infra*, on Interstate Agreement on Detainers.

In *Oliver v. Barrett*,<sup>45</sup> the court pointed out that while Georgia, by statute, “requires that extradition . . . be solely for the purpose of a criminal prosecution, it is not appropriate for the habeas court to look behind the probable cause finding of the demanding state.”

Generally, see 35 C.J.S. Extradition §§ 2 et seq.; 31A Am. Jur. 2d Extradition §§ 22 et seq. See § 2:25, *infra*, on results of illegal arrests and kidnapping of a defendant and on the right of a court to try a defendant where he was illegally brought into the jurisdiction of the court. See Annotation, “Necessity That Demanding State Show Probable Cause to Arrest Fugitive in Extradition Proceedings,” 90 A.L.R.3rd 1085 (1979).

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## Footnotes

- 1 The term “fugitive from justice” does not require that the accused fled the jurisdiction for the purpose of avoiding arrest and prosecution; it is enough that he is accused of committing a crime in one jurisdiction and can be found within the borders of another. See *Hogan v. O’Neill*, 255 U.S. 52, 41 S. Ct. 222, 65 L. Ed. 497 (1921);  *Roberts v. Reilly*, 116 U.S. 80, 6 S. Ct. 291, 29 L. Ed. 544 (1885); *Jones v. Conway*, 269 Ga. 436, 498 S.E.2d 61 (1998). This is true even where the fugitive left the state involuntarily. *Brown v. Lowry*, 185 Ga. 539, 195 S.E. 759 (1937); *Kelly v. Mangum*, 145 Ga. 57, 88 S.E. 556 (1916).
- 2 GCA § 1-403.
- 3 The phrase “treason, felony, or other crime” embraces every criminal offense known to the law of the state from which the accused has fled, including misdemeanors. See *Ex parte Reggel*, 114 U.S. 642, 5 S. Ct. 1148, 29 L. Ed. 250 (1885); Cf. *Graham v. State*, 231 Ga. 820, 821, 204 S.E.2d 630 (1974).
- 4 O.C.G.A. §§ 17-13-20 et seq.
- 5 18 U.S.C.A. § 3182. See § 14:84 et seq., *infra*, on standing.
- 6 O.C.G.A. § 17-13-22; *Hart v. Mount*, 196 Ga. 452, 453, 26 S.E.2d 453 (1943).
- 7 O.C.G.A. § 17-13-23. A person who was not present in the demanding state at the time the alleged crime was committed cannot be extradited under this section. See  *Dawson v. Smith*, 150 Ga. 350, 351, 103 S.E. 846 (1920). However, he may be extradited pursuant to O.C.G.A. § 17-13-25, discussed in this section at n. 12, *infra*.
- 8 O.C.G.A. § 17-13-23.
- 9 Where the demanding state relies on an affidavit rather than an indictment, the affidavit must describe the crime allegedly committed with the same particularity required of an indictment. O.C.G.A. § 17-13-1(4).

Closer scrutiny is required in affidavit situations than in situations where an indictment has been forwarded. See [Ellis v. Grimes](#), 198 Ga. 51, 30 S.E.2d 921 (1944).

10 The governor may lawfully delegate his authority to conduct the investigation and need not preside over an extradition hearing. [Lively v. Fulcher](#), 244 Ga. 771, 262 S.E.2d 93 (1979).

11 See also O.C.G.A. §§ 42-6-20 et seq. (the Interstate Agreement on Detainers), discussed in § 14:72, infra.

12 This situation often arises where the defendant, a resident of one state, fails to pay child support to a resident of another state, thereby committing a crime in the latter state without being present there. See

[Aikens v. Turner](#), 241 Ga. 401, 402, 245 S.E.2d 660 (1978); [Johnstone v. Deyton](#), 233 Ga. 146, 210 S.E.2d 692 (1974). This provision, as well as the remainder of the Uniform Criminal Extradition Act,

was held to be constitutional by the United States Supreme Court in [Michigan v. Doran](#), 439 U.S. 282, 99 S. Ct. 530, 58 L. Ed. 2d 521 (1978).

13 [Jenkins v. Garrison](#), 265 Ga. 42, 453 S.E.2d 698 (1995).

14 O.C.G.A. § 17-13-27.

15 O.C.G.A. § 17-13-28.

16 O.C.G.A. § 17-13-29.

17 O.C.G.A. § 17-13-31.

18 [Michigan v. Doran](#), 439 U.S. 282, 99 S. Ct. 530, 58 L. Ed. 2d 521 (1978). See, e.g., [Scott v. Walker](#), 253 Ga. 695, 324 S.E.2d 187 (1985).

19 This requires the habeas corpus court to look at the laws of the demanding state but to decide only whether a crime has been substantially charged as a matter of pleading. [Ellis v. Grimes](#), 198 Ga. 51, 30 S.E.2d 921 (1944). See [Pearce v. State of Texas](#), 155 U.S. 311, 15 S. Ct. 116, 39 L. Ed. 164 (1894).

20 See Annot., “Necessity and Sufficiency of Identification of Accused as the Person Charged, to Warrant Extradition,” 93 A.L.R.2d 912 (1964).

21 In [Graham v. State](#), 231 Ga. 820, 204 S.E.2d 630 (1974), the fugitive had been living in Georgia for almost two years before Tennessee decided to demand his extradition for a misdemeanor charge. Since moving to Georgia, the fugitive had found a steady job, had gotten married, and had children. The Supreme Court of Georgia held that the habeas corpus court was in error for granting petitioner relief based upon these factors, and granted Tennessee’s extradition demand, discussing those factors which the United States Supreme Court in [Michigan v. Doran](#) found to be controlling.

However, in [Whaley v. State](#), 254 Ga. 275, 328 S.E.2d 720 (1985), the court said that it is not “necessary ... that the ... [defendant] be shown to have been in the demanding state at the time of the commission of the crime, nor that he had fled therefrom.”

22 [St. Lawrence v. Bartley](#), 269 Ga. 94, 495 S.E.2d 18 (1998).

23 [Fagan v. Massey](#), 253 Ga. 483, 322 S.E.2d 59 (1984).

24 See, e.g., O.C.G.A. § 17-13-40; [Smithwick v. Olson](#), 229 Ga. 494, 192 S.E.2d 337 (1972). In [re Pace](#), 250 Ga. 276, 297 S.E.2d 255 (1982), holds that when an extradition proceeding is instituted for non-support, the compliance of a defendant with URESA may be a defense to extradition.

25 [Oliver v. Barrett](#), 269 Ga. 512, 514, 500 S.E.2d 908 (1998).

26 In [Grubbs v. Stynchcombe](#), 251 Ga. 39, 302 S.E.2d 552 (1983), the court held that an indictment from another state substantially charging the person with having committed a crime under the laws of the foreign state sufficiently describes the circumstances of its commission.

27 [Smith v. Bell](#), 246 Ga. 577, 272 S.E.2d 309 (1980).

28 [Covert v. Lee](#), 256 Ga. 357, 349 S.E.2d 450 (1986).

29 [Campbell v. Smith](#), 308 F. Supp. 796 (S.D. Ga. 1970).

30 [Rhodes v. State of N.C.](#), 255 Ga. 391, 338 S.E.2d 676 (1986).

31 The accused must be released when there is no probable cause that a crime was committed in another state and that the accused was responsible. [Batton v. Griffin](#), 240 Ga. 450, 241 S.E.2d 201 (1978).

32 See [Peterkin v. State](#), 147 Ga. App. 437, 439, 249 S.E.2d 152 (1978).

33 O.C.G.A. § 17-13-35.

34 O.C.G.A. § 17-13-37.

35 Bond may also be forfeited. O.C.G.A. § 17-13-38.

36 O.C.G.A. § 17-13-41.

37 O.C.G.A. § 17-13-45.

38  [Palmer v. Dugger](#), 833 F.2d 253 (11th Cir. 1987).

39 The United States Supreme Court has held that a fugitive can be tried in the demanding state for crimes  
other than the crime for which he was delivered over.  [Ker v. People of State of Illinois](#), 119 U.S. 436,  
7 S. Ct. 225, 30 L. Ed. 421 (1886). However, the Ker decision was later distinguished in [Lascelles v.](#)

40 [State](#), 148 U.S. 537, 543, 13 S. Ct. 687, 37 L. Ed. 549 (1893).  
See [Broughton v. Griffin](#), 244 Ga. 365, 260 S.E.2d 75 (1979). Cf. [Harris v. Massey](#), 241 Ga. 580, 581, 247  
S.E.2d 55 (1978); [Ward v. Jarvis](#), 240 Ga. 668, 242 S.E.2d 134 (1978). See Annot., “Discharge on Habeas  
Corpus of One Held in Extradition Proceedings as Precluding Subsequent Extradition Proceedings,” 33  
A.L.R.3d 1443 (1970).

41 See [Greene v. United States](#), 154 Fed. 401 (5th Cir. 1907).

42 See [Lascelles v. State](#), 148 U.S. 537, 13 S. Ct. 687, 37 L. Ed. 549 (1893). See Annot., “Arrest and  
Transportation of Fugitive Without Extradition Proceedings as Violation of Civil Rights Actionable  
Under 42 USCS § 1983,” 45 A.L.R.Fed. 871 (1979).

43 O.C.G.A. § 17-13-1(1), (2).

44 For example, where the accused is charged with failing to pay child support. See, e.g.,  [Aikens v.](#)  
[Turner](#), 241 Ga. 401, 245 S.E.2d 660 (1978); [Johnstone v. Deyton](#), 233 Ga. 146, 210 S.E.2d 692 (1974).  
45 [Oliver v. Barrett](#), 269 Ga. 512, 513, 500 S.E.2d 908 (1998).

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