



**House
Legislative
Analysis
Section**

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EXTRADITION WAIVERS

House Bill 6041 (Substitute H-1)
Sponsor: Rep. Randy Richardville

House Bill 6042 (Substitute H-1)
Sponsor: Rep. Cameron Brown

Committee: Criminal Justice
First Analysis (5-29-02)

THE APPARENT PROBLEM:

Sometimes, a person who has been charged with commission of a crime, or who escapes from custody after being convicted, flees to another state to avoid prosecution or imprisonment. When this happens, the state in which the crime was committed can demand that the state to which the person fled arrest and return the person. Upon receiving proper documentation from the state in which the crime was committed, the governor or individual having executive authority in the state where the person has fled must issue a warrant for the person's arrest. Once the accused is arrested under the governor's warrant, he or she is taken before a judge, informed of the extradition order and the crime for which he or she is charged, and advised of his or her right to counsel and to test the legality of the arrest by applying for a writ of *habeas corpus*. In considering release on *habeas corpus*, a court can only decide: 1) whether the extradition documents on their face are in order; 2) whether the person had been charged with a crime in the state demanding extradition; 3) whether he or she is the person named in the extradition request; and 4) whether he or she is a fugitive. (See *Michigan v. Doran*, 439 U.S. 282 [1978]). If the writ of *habeas corpus* is denied, the person is returned to the state requesting the person's extradition.

In the years since the Uniform Criminal Extradition Act (UCEA) was enacted in the state, practice has revealed a few ambiguous provisions that have been tested in court. Further, other states have made modifications in some provisions in their own uniform criminal extradition statutes. It has been proposed that the state amend the UCEA to reflect the court decisions, to incorporate current extradition practices, and to reflect practices by other states.

THE CONTENT OF THE BILLS:

House Bill 6041 would add a provision to the Code of Criminal Procedure (MCL 760.6d) to allow a court to require an extradition waiver as a condition of bail. The bill would specify that, except as provided for persons charged with a crime for which bail could be denied, a court could require a person to sign a written waiver of extradition to the state. Further, if the individual failed to sign the waiver, the court could consider the failure when determining the amount of bail to be posted by the individual. The court would also have to require an individual charged with a crime for which bail could be denied under Section 15, Article I, of the State Constitution of 1963 to sign a written waiver of extradition to the state before releasing the individual on bail.

(Article I, Section 15 specifies certain offenses for which a person may not be granted bail, including murder, treason, and first-degree criminal sexual conduct. If a person is denied bail under this provision, the constitution requires that the trial begin no more than 90 days after the date on which admission to bail was denied. If the trial does not begin within this time period, and the delay is not attributable to the defense, the court is required to immediately schedule a bail hearing and must set the amount of bail for the person.)

House Bill 6042. Currently, the Uniform Criminal Extradition Act (MCL 780.6 et al.) specifies that, if the governor decides that a demand for extradition must be complied with, he or she must sign a warrant of arrest, which must be directed to any peace officer fit to entrust with its execution. The bill would add that, if the person had been released on bail, the court would have to immediately revoke bail and detain the person, subject only to *habeas corpus* review.

The act also specifies that, unless the offense with which the prisoner is charged is shown to be one punishable by death or by life imprisonment under

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the laws of the state in which the crime was committed, a judge or magistrate may admit the person arrested to bail by bond in a sum as deemed proper. The bill would specify, instead, that unless the offense is shown – under the laws of the state in which it was committed - to be one punishable by death, life imprisonment, or by imprisonment for 20 years or more, or is for escaping from custody or confinement, the person arrested could be admitted to bail by bond in an amount that a judge or magistrate considered proper after reviewing the person's criminal history.

Currently, if a criminal prosecution has been instituted against a person under Michigan laws and is still pending, the governor may surrender the person on demand of the executive authority of another state or the governor can hold the person until he or she has been tried and discharged or convicted and punished in this state. The bill would also specify that, if a criminal prosecution had been instituted under Michigan law against a person charged under a provision relating to arrest without a warrant, the restrictions on the length of commitment specified in the act would not be applicable during the period that the criminal prosecution was pending in the state.

[Under the act, an arrest may be made without a warrant from another state if a peace officer has reasonable information that the accused is charged by the courts in the other state of a crime punishable by death or imprisonment for a term exceeding one year. However, when so arrested, the accused must be taken before a judge or magistrate to have a complaint be made against him under oath setting forth the grounds for the arrest. A judge can commit a person who had been charged in another state and who had fled that state to the county jail for up to 30 days (though the person may be eligible for bail). This is for the purpose of providing the time necessary for the arrest of the person under a warrant of the governor or on a requisition from the executive authority of the other state. If arrest under warrant of the governor is not made within the 30 days, the person could be discharged, recommitted for up to 60 days, or released on bail, but only for a period not to exceed 60 days.]

Costs. House Bill 6042 would specify that a court could order an individual who had been extradited to the state for committing a crime, and who had been convicted of that crime, to pay the actual and reasonable costs of extradition, including, but not limited to, transportation costs, and the salaries or wages of law enforcement and prosecution personnel,

including overtime pay, for processing the extradition and returning the individual to the state.

Written Waiver of Extradition Proceedings. In addition to current provisions regarding written waiver of extradition proceedings, the bill would add that, if a waiver were executed, the judge would be required to remand the person to custody without bail. The order would have to direct the officer having the person in custody to deliver the person to the duly authorized agent of the demanding state, together with copies of the order and the waiver.

House Bills 6041 and 6042 are tie-barred to each other and would take effect January 1, 2003.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would have minimal fiscal implementations for the Department of Corrections. (5-28-02)

ARGUMENTS:

For:

The bills would streamline the extradition process, incorporate extradition practices utilized by other states, and would clarify a couple of provisions that have been challenged in court. House Bill 6041 would allow Michigan judges to require a person to sign a written waiver of extradition before release on bail for a crime committed in this state, and require signing of the waiver for certain crimes such as murder and first-degree criminal sexual conduct. Failure to sign the waiver could possibly mean a higher amount of bail may be required to be posted, or no release on bond at all. Reportedly, several other states have adopted such a practice. The purpose of bail is to allow the person charged with a crime to remain at large while the case is being prosecuted. The posting of bail is to encourage the person to attend all required hearings and court dates; otherwise, the money posted for the bail is forfeited. If a person signed a waiver of extradition, it would show that the person understood that fleeing the state to avoid prosecution is wrong, and that if he or she did flee, that there would be no option to contest the extradition order other than that based on a writ of *habeas corpus*. On the other hand, a person who refused to sign the waiver could be viewed as someone who posed a greater risk of fleeing; therefore, a higher bail amount could be fitting to discourage any thoughts of illicit flight. Far from being overly harsh, the bill could actually act as an encouragement for judges to grant bail to individuals who they otherwise would deny, such as those

charged with more serious crimes who are currently routinely denied release on bail.

House Bill 6042 pertains to the extradition of fugitives who have fled to this state. Sometimes a person is arrested in this state on an open nationwide warrant, and then the state in which the crime was committed is notified that the person has been arrested. During the time between the arrest and the arrival of the required documentation, a person may be released on bail under Michigan law. The bill would clarify that once the governor issued an extradition warrant, the person who was the subject of the extradition order would not be eligible for bail, and, if he or she had been previously released on bail, the bail would have to be cancelled immediately and the person jailed while awaiting extradition. This reflects the majority opinion in a 1991 appellate court ruling. [See *In re Ford (Wayne County Prosecutor v 36th District Judge)*, 187 Mich App 452 (1991).]

This bill would also add to the list of crimes for which bail would be denied. While waiting for the order of extradition from the originating state, Michigan would have a broader list of crimes for which it could refuse to release a person and could refuse to release a person on bail if he or she had been charged with escaping from custody or breaking out of prison.

House Bill 6042 would also allow a court to order a person who flees this state to pay the extradition costs incurred to bring him or her back to Michigan. It would be a strong incentive for a person charged with a crime in Michigan to stay and face prosecution if he or she realized that reimbursement could be ordered for the costs incurred in returning him or her to the state, in addition to losing whatever bond or bail money was posted before fleeing the state. Further, the bill would exempt a person from the time limits on commitment while waiting for the governor's warrant currently imposed in statute if that person had also committed a crime in this state and the prosecution for that crime was pending.

Against:

The amendments should be considered carefully to ensure that by signing, or being required to sign, an extradition waiver, that a person is not being encouraged or forced to give up any due process rights protected under the federal and state constitutions.

POSITIONS:

The Office of the Governor supports the bills. (5-28-02)

The Prosecuting Attorneys Association of Michigan supports the bills. (5-28-02)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.