# Chapter 147

## 1961 REPLACEMENT PART

# Uniform Criminal Extradition Act


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Appointment of counsel by court, 133.625, 135.320

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Extradition and surrender of fugitives, U. S. Const. Art. IV, § 2

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**147.010 Definitions.** Where appearing in this chapter, the term "Governor" includes any person performing the functions of Governor by authority of the law of this state. The term "executive authority" includes the Governor and any person performing the functions of Governor in a state other than this state, and the term "state," referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

**147.020 Fugitives from other states; Governor to cause arrest and delivery of criminals.** Subject to the qualifications of this chapter and the provisions of the Constitution of the United States controlling, and Acts of Congress in pursuance thereof, it is the duty of the Governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

**147.030 Form of demand.** No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing and accompanied by a copy of an indictment found or by an information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

**147.040 Investigation of demand and report.** When a demand shall be made upon the Governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Attorney General or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

**147.050 Facts documents must show.** A warrant of extradition must not be issued unless the documents presented by the executive authority making the demand show that:

(1) Except in cases arising under ORS 147.060, the accused, when demanded upon a charge of crime, was present in the demanding state at the time of the commission of the alleged crime and thereafter fled from that state;

(2) The person demanded is in this state; and

(3) They constitute full compliance with the requirements of ORS 147.030.

**147.060 Extradition of person not present in demanding state at time of commission of crime.** The Governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in ORS 147.050 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand; and the provisions of this chapter not otherwise inconsistent shall apply to such cases, notwithstanding that the accused was not in that state at the time of the commission of the crime and has not fled therefrom.

**147.070 Governor's warrant of arrest.** If the Governor shall decide that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to a sheriff, marshal, coroner or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issue.

**147.080 Execution of the warrant.** Such warrant shall authorize the officer or other person to whom directed to arrest the accused at any place where he may be found within the state and to command the aid of all sheriffs and other peace officers in the execution of the warrant, and to deliver the accused, subject to the provisions of this act, to the duly authorized agent of the demanding state.

**147.090 Authority of arresting officer to command assistance.** Every such officer or other person empowered to make the arrest shall have the same authority in arresting the accused to command assistance therein as sheriffs and other officers have by law in the execution of any criminal process directed to them, with the like penalties against those who refuse their assistance.

**147.100 Rights of arrested person.** No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he has been informed of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand legal counsel; and if the prisoner, his friends, or counsel shall state that he or they desire to test the legality of the arrest, the prisoner shall be taken forthwith before a judge of a court of record in this state, who shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. And when such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the public prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

**147.110 Penalty for disobedience to ORS 147.100.** Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the Governor's warrant in disobedience to ORS 147.100 shall be guilty of a misdemeanor and, on conviction, shall be fined not more than $1,000 or be imprisoned in the county jail not more than six months, or both.

**147.120 Confinement of prisoner.** (1) The officer or person executing the Governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the person having charge of him is ready to proceed on his route, such person being chargeable with the expense of keeping.

(2) The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

**147.130 Arrest prior to requisition.** Whenever any person within this state shall be charged on the oath of any credible person before any judge or other magistrate of this state with the commission of a crime in any other state and, except in cases arising under ORS 147.060, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or other magistrate in this state setting forth on the affidavit of any creditable person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under ORS 147.060, has fled therefrom or has been convicted of a crime in that state and escaped from confinement, or has broken the terms of his bail, probation or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and bring him before the same or any other judge, court or magistrate who may be convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

**147.140 Arrest without warrant.** The arrest of a person may be lawfully made also by an officer or a private citizen without a warrant, upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in ORS 147.130; and thereafter his answer shall be heard as if he had been arrested on a warrant.

**147.150 Commitment to await arrest on requisition.** If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and that he probably committed the crime, and except in cases arising under ORS 147.060 that he has fled from justice, the judge or magistrate must commit him to jail by a warrant reciting the accusation for such a time specified in the warrant as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in ORS 147.160, or until he shall be legally discharged.

**147.160 Bail.** Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, the judge or magistrate must admit the person arrested to bail by bond or undertaking, with sufficient sureties and in such sum as he deems proper, for his appearance before him at a time specified in such bond or undertaking, and for his surrender, to be arrested upon the warrant of the Governor of this state.

**147.170 Proceedings in absence of arrest under executive warrant within specified time.** If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant, bond or undertaking, the judge or magistrate may discharge him or may recommit him to a further day, or may again take bail for his appearance and surrender, as provided in ORS 147.160; and at the expiration of the second period of commitment, or if he has been bailed and appeared according to the terms of his bond or undertaking, the judge or magistrate either may discharge him or may require him to enter into a new bond or undertaking to appear and surrender himself at another day.

**147.180 Forfeiture of bond; recovery thereon.** If the prisoner is admitted to bail and fails to appear and surrender himself according to the condition of his bond, the court, by proper order, shall declare the bond forfeited, and recovery may be had thereon in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within this state.

**147.190 Persons under criminal prosecution in this state at time of requisition.** If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the Governor, at his discretion, either may surrender him on the demand of the executive authority of another state or may hold him until he has been tried and discharged, or convicted and punished in this state.

**147.200 When guilt of accused may be inquired into.** The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition, accompanied by a charge of crime in legal form as provided in ORS 147.010 to 147.190, shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime.

**147.210 Governor may recall warrant; alias writ.** The Governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

**147.220 Warrant to agent to return fugitive from this state.** Whenever the Governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state from the chief executive of any other state, or from the Chief Justice or an Associate Justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state to some agent or agents, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of

the county in this state in which the offense was committed.
[Amended by 1961 c.389 §4]

**147.230 Application for requisition; filing and forwarding of papers.** (1) When the return to this state of a person charged with crime in this state is required, the district attorney of the county in which the offense is committed shall present to the Governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that in the opinion of the said district attorney the ends of justice require the arrest and return of the accused to this state for trial, and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the district attorney of the county in which the offense was committed, the parole board, or the superintendent of the institution or sheriff of the county, from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, superintendent or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by indorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavit, or of the judgment of conviction or of the sentence shall be filed in the office of the Secretary of State to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

**147.235 Appointment of agent to return fugitive from this state who waives extradition.** In the event a fugitive from this state shall waive extradition, an agent or agents to secure his return may be appointed by the district attorney of the county in which the offense was committed, and the account of such agent or agents embracing necessary expenses incurred in performing the service, shall be audited and paid in the same manner as accounts presented under ORS 147.290.
[1961 c.389 §3]

**147.240** [See Reviser's Note for ORS 147.240]

**147.250 Immunity from civil process in certain civil cases.** A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

**147.253 Written waiver of extradition proceedings.** (1) Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in ORS 147.070 and 147.080 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to apply for a writ of habeas corpus as provided for in ORS 147.100.

(2) If and when such consent has been

duly executed it shall forthwith be forwarded to the office of the Governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the right of the accused person to submit voluntarily to the custody of such agent or agents for return without formality to the demanding state.

**147.256 Nonwaiver by this state.** Nothing in this chapter contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

**147.260 Trial of extradited person for other crimes.** After a person has been brought back to this state upon extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

**147.270 Construction of Act.** ORS 147.010 to 147.230 and 147.250 to 147.280 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact the Uniform Criminal Extradition Act.

**147.280 Short title.** ORS 147.010 to 147.230 and 147.250 to 147.280 may be cited as the Uniform Criminal Extradition Act.

**147.290 Payment of agent's expenses.** The account of the agent or agents embracing necessary expenses incurred in performing the service, after approval by the Governor, shall be paid, after being audited and allowed as other claims against the state, from any moneys appropriated therefor.
[Amended by 1961 c.389 §1]

**CERTIFICATE OF LEGISLATIVE COUNSEL**

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1961.

Sam R. Haley
Legislative Counsel