

HOUSE BILL NO. 535

INTRODUCED BY G. OVERSTREET

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE UNIFORM CRIMINAL EXTRADITION ACT; PROVIDING AND REVISING DEFINITIONS; REVISING STATUTES TO USE NEW DEFINITIONS AND TERMINOLOGY; REVISING SERVICE PROCEDURES FOR A GOVERNOR'S WARRANT; REVISING THE PROCESS AND CRITERIA FOR A HABEAS CHALLENGE; REVISING THE PROCESS AND TIMELINES FOR HOLDING A REQUISITIONED PERSON IN CUSTODY; REVISING THE TRANSPORT COST APPROVAL PROCESS; SETTING CONDITIONS AFTER A TRANSPORT; REVISING THE PROCESS FOR A REQUISITION; AND AMENDING SECTIONS 46-30-101, 46-30-102, 46-30-202, 46-30-203, 46-30-204, 46-30-211, 46-30-212, 46-30-213, 46-30-214, 46-30-215, 46-30-217, 46-30-218, 46-30-225, 46-30-226, 46-30-228, 46-30-229, 46-30-302, 46-30-303, 46-30-304, 46-30-401, 46-30-402, 46-30-411, AND 46-30-412, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Timeline for delivering person. After the person is arrested upon a governor's warrant of arrest and rendition of this state, or a waiver of extradition has been executed, the timeline for the transfer of the person to the agent or agents of another state must be set as provided in the federal Extradition Act, 18 U.S.C. 3182, as of December 17, 2024. If a hold exists under 46-30-202, the timeline for the transfer of the person is tolled until the person has been tried and discharged or convicted and punished in this state.

NEW SECTION. Section 2. Conditions upon return to state. When a person is arrested on a judicial warrant after being returned to this state under 46-30-411, the following conditions must apply:

- (1) a person may not be admitted to bail without first appearing before the judge who issued the warrant, unless that judge is unavailable, in which case another judge within the same jurisdiction may consider the matter; and

1 (2) the person must be held liable for restitution on the transport costs incurred by a governmental
2 entity as provided for in 46-18-241 through 46-18-249.

3

4 **Section 3.** Section 46-30-101, MCA, is amended to read:

5 **"46-30-101. Definitions.** As used in this chapter, the term:

6 (1) "executive authority" includes the governor and any person performing the functions of
7 governor in a state other than this state or the presiding officer of a federally recognized Indian tribe within the
8 state of Montana United States;

9 (2) "governor" includes any person performing the functions of governor by authority of the law of
10 this state;

11 (3) "governor's warrant of arrest and rendition" refers to the warrant issued by the governor
12 authorizing the extradition of the person to another state;

13 (4) "requisition" refers to the formal, written extradition demand in the form of a warrant issued by
14 the governor or by the executive authority of a demanding state;

15 (3)(5) "state", when referring to a state other than this state, includes any other state or territory,
16 organized or unorganized, of the United States of America or an Indian reservation within the state of Montana
17 United States;

18 (6) "waiver of extradition" means a written agreement stipulating the person's consent to be
19 transported to a demanding state through a voluntary waiver of the person's right to provisions relating to bail,
20 the issuance and service of the governor's warrant of arrest and rendition, and the right to obtain a writ of
21 habeas corpus."

22

23 **Section 4.** Section 46-30-102, MCA, is amended to read:

24 **"46-30-102. Nonwaiver by this state.** Nothing contained in this chapter may be considered a waiver
25 by this state of its right, power, or privilege to try the demanded requisitioned person for a crime committed
26 within this state or of its right, power, or privilege to regain custody of the person by extradition proceedings or
27 otherwise for the purpose of trial, sentence, or punishment for a crime committed within this state; nor may any
28 proceedings had under this chapter which result in or fail to result in extradition be considered in any way a

1 waiver by this state of any of its rights, privileges, or jurisdiction."

2

3 **Section 5.** Section 46-30-202, MCA, is amended to read:

4 **"46-30-202. Prosecution pending in this state at time of requisition.** If a criminal prosecution has
5 been instituted against a person under the laws of this state and is still pending, the governor may surrender
6 the person on ~~demand~~ requisition of the executive authority of another state or hold the person until the person
7 has been tried and discharged or convicted and punished in this state."

8

9 **Section 6.** Section 46-30-203, MCA, is amended to read:

10 **"46-30-203. Extradition of persons who left demanding requisitioning state involuntarily.** The
11 governor of this state may also surrender on ~~demand~~ requisition of the ~~governor~~ executive authority of any
12 other state any person in this state who is charged in the manner provided in 46-30-401 with having violated the
13 laws of the state whose ~~governor~~ executive authority is making the ~~demand~~ requisition, even though such
14 person left the ~~demanding~~ requisitioning state involuntarily."

15

16 **Section 7.** Section 46-30-204, MCA, is amended to read:

17 **"46-30-204. Extradition of persons not present in demanding requisitioning state when crime**
18 **committed.** The governor of this state may also surrender, on ~~demand~~ requisition of the executive authority of
19 any other state, any person in this state charged in such other state in the manner provided in 46-30-211 with
20 committing an act in this state or in a third state intentionally resulting in a crime in the state whose executive
21 authority is making the ~~demand~~ requisition. The provisions of this chapter not otherwise inconsistent ~~shall~~ must
22 apply to such cases, even though the accused was not in that state at the time of the commission of the crime
23 and has not fled therefrom."

24

25 **Section 8.** Section 46-30-211, MCA, is amended to read:

26 **"46-30-211. Demand Requisition -- form.** (1) A ~~demand~~ requisition for the extradition of a person
27 charged with a crime in another state may not be recognized by the governor of this state unless it is in writing
28 alleging that the accused was present in the ~~demanding~~ requisitioning state at the time of the commission of the

1 alleged crime and that after the crime the person fled from the state, except in cases arising under 46-30-204,
2 and accompanied by:

3 (a) a copy of an indictment found or information supported by an affidavit in the state having
4 jurisdiction of the crime;

5 (b) a copy of an affidavit made before a magistrate in that state, together with a copy of any
6 warrant that was issued; or

7 (c) a copy of a judgment of conviction or of a sentence imposed in execution of the judgment or
8 sentence, together with a statement by the executive authority of the demanding requisitioning state that the
9 person claimed has escaped from confinement or has broken the terms of the person's bail, probation, or
10 parole.

11 (2) The indictment, information, or affidavit made before the magistrate must substantially charge
12 the person ~~demande~~ requisitioned with having committed a crime under the law of that state. The copy of the
13 indictment, information, affidavit, judgment of conviction, or sentence must be authenticated by the executive
14 authority making the ~~demand~~ requisition."

15

16 **Section 9.** Section 46-30-212, MCA, is amended to read:

17 **"46-30-212. Investigation by governor.** When a ~~demand~~ requisition is made upon the governor of
18 this state by the executive authority of another state for the surrender of a person charged with crime, the
19 governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in
20 investigating the ~~demand~~ requisition and to report to the governor the situation and circumstances of the person
21 ~~demande~~ requisitioned and whether the person ought to be surrendered."

22

23 **Section 10.** Section 46-30-213, MCA, is amended to read:

24 **"46-30-213. Issuance of arrest warrant by governor.** (1) If the governor decides that the ~~demand~~
25 requisition should be complied with, the governor shall sign a warrant of arrest and rendition, which must be
26 sealed with the state seal and be directed to any peace officer or other person whom the governor may think fit
27 to entrust with the execution of the warrant. The warrant must substantially recite the facts necessary to the
28 validity of its issuance.

1 (2) A copy or an abstract of the governor's warrant of arrest and rendition may be submitted
2 electronically to the entity entrusted with the execution of the warrant for the purpose of expediting service of
3 the warrant. The copy or abstract is as effectual in the hands of the entity as if the entity held the original
4 governor's warrant of arrest and rendition."

5

6 **Section 11.** Section 46-30-214, MCA, is amended to read:

7 "**46-30-214. Recall or reissuance of warrant or alias warrant.** The governor may recall the
8 governor's warrant of arrest and rendition or may issue another warrant whenever the governor considers it
9 proper."

10

11 **Section 12.** Section 46-30-215, MCA, is amended to read:

12 "**46-30-215. Execution of warrant.** The governor's warrant of arrest and rendition must authorize the
13 peace officer or other person to whom it is directed to arrest the accused at any time and any place where the
14 accused may be found within the state, to command the aid of all peace officers or other persons in the
15 execution of the warrant, and to deliver the accused, subject to the provisions of this chapter, to the duly
16 authorized agent of the demanding-requisitioning state."

17

18 **Section 13.** Section 46-30-217, MCA, is amended to read:

19 "**46-30-217. Rights of accused persons -- habeas corpus.** (1) A person arrested in this state upon
20 a governor's warrant of arrest and rendition pursuant to this chapter may not be delivered over to the agent
21 whom the executive authority demanding-requisitioning the person has appointed to receive the person unless
22 the person is first taken without delay before a judge of a court of record in this state, who shall inform the
23 person of the demand-requisition made for the person's surrender and of the crime with which the person is
24 charged and that the person has the right to demand and procure legal-counsel.

25 (2) If the prisoner or the prisoner's counsel states that the prisoner or the prisoner and counsel
26 desire to test the legality of the prisoner's arrest on the governor's warrant of arrest and rendition, the judge of
27 the court of record shall remand the prisoner to custody and fix a reasonable time to be allowed the prisoner
28 within which to apply for a writ of habeas corpus. When the writ is applied for, notice of the writ and of the time

1 and place of hearing on the writ must be given to the prosecuting officer of the county in which the arrest was
2 made and in which the accused is in custody and to the agent of the demanding requisitioning state. A
3 governor's warrant of arrest and rendition issued in accordance with the provisions of 46-30-213 and 46-30-215
4 must be presumed to be valid, and the person named in the warrant must be held in custody at all times and
5 may only be eligible for release on bail if a court finds:

6 (a) that the person in custody is not the same person named in the warrant;

7 (b) that the person is not a fugitive from justice under 46-30-201 or otherwise subject to extradition
8 under 46-30-204;

9 (c) that there is no criminal charge or criminal proceeding pending against the person in the
10 requisitioning state; or

11 (d) that the documents are not on their face in order."

12

13 **Section 14.** Section 46-30-218, MCA, is amended to read:

14 **"46-30-218. Penalty for violating accused's rights.** An officer who delivers to the agent for
15 extradition of the demanding requisitioning state a person in custody under the governor's warrant in willful
16 disobedience of 46-30-217 shall be guilty of a misdemeanor and on conviction shall be fined not more than
17 \$1,000 or be imprisoned not more than 6 months, or both."

18

19 **Section 15.** Section 46-30-225, MCA, is amended to read:

20 **"46-30-225. Guilt or innocence of accused, when inquired into.** The guilt or innocence of the
21 accused as to the crime of which the accused is charged may not be inquired into by the governor or in any
22 proceeding after the demand requisition for extradition provided for in 46-30-211 has been presented to the
23 governor except as it may be involved in identifying the person held as the person charged with the crime."

24

25 **Section 16.** Section 46-30-226, MCA, is amended to read:

26 **"46-30-226. Confinement of accused in jail on route.** (1) The officer or persons executing the
27 governor's warrant of arrest and rendition or the agent of the demanding requisitioning state to whom the
28 prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city

1 through which the prisoner may pass. The keeper of the jail shall receive and safely keep the prisoner until the
 2 officer or person having charge of the prisoner is ready to proceed on the route. However, the officer or person
 3 is chargeable with the expense of keeping the prisoner.

4 (2) The officer or agent of a ~~demanding~~ requisitioning state to whom a prisoner may have been
 5 delivered following extradition proceedings in another state or to whom a prisoner may have been delivered
 6 after waiving extradition in the other state and who is passing through this state with a prisoner for the purpose
 7 of immediately returning the prisoner to the ~~demanding~~ requisitioning state may, when necessary, confine the
 8 prisoner in the jail of any county or city through which the officer or agent may pass. The keeper of the jail shall
 9 receive and safely keep the prisoner until the officer or agent having charge of the prisoner is ready to proceed
 10 on the route. ~~However, the~~ The officer or agent is chargeable with the expense of keeping the prisoner.
 11 However, the officer or agent shall produce and show to the keeper of the jail satisfactory written evidence of
 12 the fact that the officer or agent is actually transporting the prisoner to the ~~demanding~~ requisitioning state after a
 13 requisition by the executive authority of the ~~demanding-requisitioning~~ state. The prisoner is not entitled to
 14 demand a new requisition while in this state."

15

16 **Section 17.** Section 46-30-228, MCA, is amended to read:

17 **"46-30-228. Written waiver of extradition proceedings.** (1) Any person of this state charged with
 18 having committed any crime in another state or alleged to have escaped from confinement or broken the terms
 19 of the person's bail, probation, or parole in another state may waive the issuance and service of the warrant
 20 provided for in 46-30-213 and 46-30-215 and all other procedures incidental to extradition proceedings,
 21 including provisions related to bail, by executing or subscribing in the presence of a judge of any court of record
 22 within this state a writing which states that the person consents to ~~return to the demanding~~ be returned to
 23 another state. Before a waiver of extradition is executed or subscribed by the person, it is the duty of the judge
 24 to inform the person of the person's rights to provisions relating to bail and to the issuance and service of a
 25 governor's warrant of extradition arrest and rendition and to obtain a writ of habeas corpus as provided for in
 26 46-30-217.

27 (2) If and when ~~consent~~ a waiver of extradition has been duly executed, ~~it~~ the clerk of court must,
 28 without delay, ~~be forwarded forward~~ it to the office of the governor of this state and to be filed in the governor's

1 office. The judge shall remand the person to custody without bail and, unless a hold exists under 46-30-202,
 2 direct the officer having the person in custody to deliver the person, without delay, ~~the person~~ to the duly
 3 accredited agent or agents of the ~~demanding other~~ state and shall deliver or cause to be delivered to the agent
 4 or agents a copy of the ~~consent waiver.~~ A waiver of extradition lawfully executed in this state may not be
 5 revoked after notice of the waiver to the other state.

6 (3) This section does not limit the rights of the accused person to return voluntarily and without
 7 formality to the ~~demanding other~~ state before the person executes or subscribes to a waiver of extradition, nor
 8 may this waiver of extradition procedure be considered to be an exclusive procedure or to limit the powers,
 9 rights, or duties of the officers of the ~~demanding other~~ state or of this state."
 10

10

11 **Section 18.** Section 46-30-229, MCA, is amended to read:

12 **"46-30-229. Prior waiver of extradition.** (1) ~~A~~ When a court is presented with a prior waiver of
 13 extradition executed in another state for a person who is alleged to have violated the terms of the person's bail,
 14 probation, parole, or any other conditional release from another state and who is held in this state may, the
 15 person must be released to the duly authorized agent of that other state without the governor's warrant of arrest
 16 and rendition provided for in 46-30-213 if or without a waiver of extradition subscribed to in this state under 46-
 17 30-228 after satisfying the following ~~has occurred~~:

18 (a) a ~~district court of record~~ in this state has held a hearing at which the state has presented:

19 (i) a certified copy of ~~an agreement to waive extradition~~ a waiver of extradition agreement, signed
 20 by the person or an order from the other state releasing the person on the condition that the person ~~waive~~
 21 execute a waiver of extradition;

22 (ii) a certified copy of the warrant or order from the other state directing the return of the person for
 23 violating the terms of the person's release; and

24 (iii) evidence that the person is the same person named in the warrant or order from the other
 25 state; and

26 (b) the ~~district court of record~~ has found that there is probable cause to believe that the person is
 27 the same person charged in the warrant or order from the other state. Whenever a ~~district court of record~~
 28 makes this finding, it shall, except as provided in subsection (2), order that the person be remanded to custody

1 without bail and delivered to agents of the other state without delay, unless a hold exists under 46-30-202. The
2 court shall also advise the person of the right to contest ~~the~~its order by filing a writ of habeas corpus.

3 (2) If the person wishes to test the validity of the order issued pursuant to subsection (1)(b), the
4 court shall fix a reasonable time for the person to apply for a writ of habeas corpus before the person may be
5 released to agents from the other state. When the writ is applied for, notice of the writ and of the time and place
6 of hearing on the writ must be given to the prosecuting officer of the county in which the arrest was made and in
7 which the accused is in custody and to the agent of the requisitioning state."

8

9 **Section 19.** Section 46-30-302, MCA, is amended to read:

10 **"46-30-302. Commitment to await requisition.** If from the examination before the judge or
11 magistrate it appears that the person held is the person charged with having committed the crime alleged and,
12 except in cases arising under 46-30-204, that the person has fled from justice, the judge or magistrate shall by
13 a warrant reciting the accusation commit the person to the county jail for a time specified in the warrant not
14 exceeding 30 days ~~and specified in the warrant~~ that will enable the arrest of the accused to be made under a
15 governor's warrant of the governor arrest and rendition issued in this state on a requisition of the executive
16 authority of the requisitioning state having jurisdiction of the offense unless the accused posts bail as provided
17 in 46-30-303 or until the accused is legally discharged."

18

19 **Section 20.** Section 46-30-303, MCA, is amended to read:

20 **"46-30-303. Bail while awaiting requisition.** Unless the offense with which the prisoner is charged is
21 shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was
22 committed, a judge or magistrate in this state may admit the person arrested to bail by bond or undertaking with
23 sufficient sureties and in a sum that the judge or magistrate considers proper, conditioned for the prisoner's
24 appearance before the judge or magistrate at a time specified in the bond or undertaking and for the prisoner's
25 surrender to be arrested upon the governor's warrant of arrest and rendition~~of the governor of this state.~~"

26

27 **Section 21.** Section 46-30-304, MCA, is amended to read:

28 **"46-30-304. Extension of time of commitment or bail.** If the accused is not arrested under the

1 ~~warrant of the governor~~ governor's warrant of arrest and rendition by the expiration of the time specified in the
2 warrant, bond, or undertaking issued under 46-30-302 and 46-30-303, a judge or magistrate may discharge the
3 accused or may recommit the accused for a further period of 60 days or a supreme court justice or ~~district court~~
4 judge of a court of record may again take bail for the accused's appearance and surrender, as provided in 46-
5 30-303, for a period not to exceed 60 days after the date of the new bond or undertaking."
6

7 **Section 22.** Section 46-30-401, MCA, is amended to read:

8 **"46-30-401. Application for issuance of requisition.** (1) When the return to this state of a person
9 charged with a crime in this state is required, the prosecuting attorney shall present to the governor a written
10 application for a requisition for the return of the person charged. The application must state the name of the
11 person charged, the crime charged against the person, the approximate time, place, and circumstances of its
12 commission, and the state in which the person is believed to be, including the location of the accused in that
13 state at the time the application is made. The application must certify that in the opinion of the prosecuting
14 attorney the ends of justice require the arrest and return of the accused to this state for trial and that the
15 proceeding is not being instituted to enforce a private claim.

16 (2) When the return to this state is required of a person who has been convicted of a crime in this
17 state and has escaped from confinement or broken the terms of bail, probation, or parole, the prosecuting
18 attorney of the county in which the offense was committed, the board of pardons and parole, or the warden of
19 the institution or sheriff of the county from which the escape was made shall present to the governor a written
20 application for a requisition for the return of the person. The application must state the name of the person, the
21 crime of which the person was convicted, the circumstances of the person's escape from confinement or of the
22 breach of the terms of bail, probation, or parole, and the state in which the person is believed to be, including
23 the location of the person in that state at the time the application is made.

24 (3) The application must be verified by affidavit, executed in duplicate, and accompanied by two
25 certified copies of the:

- 26 (a) indictment returned;
27 (b) information and affidavit filed;
28 (c) complaint made to the judge or magistrate stating the offense with which the accused is

1 charged;

2 (d) judgment of conviction; or

3 (e) sentence.

4 (4) The prosecuting officer, board of pardons and parole, warden, or sheriff may also attach further
5 affidavits and other documents in duplicate that are considered proper to be submitted with the application.

6 (5) One copy of the application, with the action of the governor indicated by endorsement on the
7 application, and one of the certified copies of the indictment, complaint, information and affidavits, judgment of
8 conviction, or sentence and other documents included in the application must be filed in the office of the
9 secretary of state to remain of record in that office. The other copies of all papers must be forwarded with the
10 governor's requisition."
11

12 **Section 23.** Section 46-30-402, MCA, is amended to read:

13 **"46-30-402. Requisition by governor.** Whenever the governor of this state ~~demands~~ requisitions a
14 person charged with crime or with escaping from confinement or breaking the terms of the person's bail,
15 probation, or parole in this state from the chief executive of any other state or from the chief justice or an
16 associate justice of the supreme court of the District of Columbia authorized to receive a ~~demand~~ requisition
17 under the laws of the United States, the governor shall issue a ~~warrant~~ requisition under the seal of this state to
18 some agent commanding the agent to receive the person charged if delivered to the agent and convey the
19 person to the proper officer of the county in this state in which the offense was committed."
20

21 **Section 24.** Section 46-30-411, MCA, is amended to read:

22 **"46-30-411. Expenses of bringing fugitives persons back to this state.** (1) ~~When the governor of~~
23 ~~this state, in the exercise of the authority conferred by Article IV, section 2, of the constitution of the United~~
24 ~~States or by the laws of this state, demands from the executive authority of any state of the United States or of~~
25 ~~any foreign government the surrender to the authorities of this state of a fugitive from justice who has been~~
26 ~~found and arrested in that state or foreign government, the accounts of the person employed by the governor to~~
27 ~~bring back the fugitive must be audited by~~ When a person charged or convicted of crime in this state has been
28 found and arrested in another state and is to be returned to this state by requisition of the governor or by a

1 waiver of extradition or by a prior waiver of extradition, the expenses payable by this state to the agent
2 authorized by the office of the governor to transport the person must be approved by the office of the governor
3 and paid out of the state treasury.

4 (2) An agent of this state authorized to return a fugitive from justice person to this state may use
5 commercial transportation, aircraft, or motor vehicle to return the fugitive person. If the fugitive person is
6 returned to this state by an officer or employee of the state or of a political subdivision of the state, the agent
7 must be paid travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in returning the fugitive
8 person to this state. If the governor's authorized agent contracts for the performance of the transportation with a
9 person or entity who is not an officer or employee of the state or of a political subdivision of the state, the
10 expenses must be paid in accordance with the rate established by the contracting parties, as approved by the
11 office of the governor."
12

13 **Section 25.** Section 46-30-412, MCA, is amended to read:

14 **"46-30-412. Restrictions on compensation for assisting return of fugitive persons.** No
15 compensation, fee, or reward of any kind may be paid to or received by a public officer of this state or other
16 person for a service rendered in procuring from the governor the demand-requisition mentioned in 46-30-
17 411(1), for the surrender of the fugitive person, or for conveying the fugitive to this state or detaining the fugitive
18 person in this state except as provided in 46-30-411."
19

20 NEW SECTION. Section 26. Codification instruction. (1) [Section 1] is intended to be codified as
21 an integral part of Title 46, chapter 30, part 2, and the provisions of Title 46, chapter 30, part 2, apply to [section
22 1].

23 (2) [Section 2] is intended to be codified as an integral part of Title 46, chapter 30, part 4, and the
24 provisions of Title 46, chapter 30, part 4, apply to [section 2].

25 - END -