WEST VIRGINIA CODE CHAPTER 62 ARTICLE 14A

WV Legislature

§62-14A-1. Extradition of fugitives from foreign nations.

The Governor, whenever required by the executive authority of the United States pursuant to the Constitution and laws thereof, shall deliver over to justice any person found within this state who shall be charged with having committed any crime without the jurisdiction of the United States.

The Governor, though not so required, may in his or her discretion deliver over to justice any person found within this state who shall be charged with having committed without the jurisdiction of the United States any crime except treason, which by the laws of this state, if committed herein, would be punishable by death or imprisonment in the penitentiary. The Governor shall require such evidence of the guilt of the person so charged, as would be necessary to justify an indictment against the person, had the crime charged been committed in this state. The expense of the apprehension and delivery shall be defrayed by those to whom the delivery is made.

WV Legislature

§62-14A-2. Extradition of persons charged with crime in another state or imprisoned or awaiting trial in another state.

(a) Where appearing in this article, 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. 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.

(b) Subject to the provisions of this article, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted 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: Provided, That the demand or application of the executive authority of such other state is accompanied by an affidavit or sworn evidence that the demand or application is made in good faith for the punishment of crime, and not for the purpose of collecting a debt or pecuniary mulct, or of removing the alleged fugitive to a foreign jurisdiction with a view to serve him or her there with civil process.

(c) No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing alleging, except in cases arising under subsection (g) of this section, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he or she fled from the state, and accompanied by a copy of an indictment found, or by information supported by affidavit, in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate or justice thereof, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or 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 or her bail, probation, or parole. The indictment, information, or affidavit made before the magistrate or justice 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.

(d) 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, any prosecuting officer, or the West Virginia State Police, in this state to investigate or assist in investigating the demand, and to report to him or her the situation and circumstances of the person so demanded, and whether he or she ought to be surrendered.

(e) When it is desired to have returned to this state a person charged in this state with crime, and such person is imprisoned or is held under criminal proceedings then pending

WV Legislature

against him or her in another state, the Governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his or her term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

(f) The Governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in §62-14A-5(b) of this code, with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state voluntarily (involuntarily).

(g) 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 subsection (c) of this section, 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 article not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

WV Legislature

§62-14A-3. Governor's warrant of arrest.

(a) If the Governor decides that the demand should be complied with, the Governor shall sign a warrant of arrest which shall be sealed by the Secretary of State with the Great Seal of West Virginia, and be directed by the Governor to any peace officer or other person whom he or she may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

(b) Such warrant shall authorize the peace officer or other person directed to arrest the accused at any time and any place where he or she may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provision of this article, to the duly authorized agent of the demanding state.

(c) The Governor may recall the warrant of arrest or may issue another warrant whenever the Governor deems proper.

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

WV Legislature

§62-14A-4. Hearing after arrest; application for writ of habeas corpus; arrest and confinement of fugitives from another state; bail; persons involved in criminal or civil actions in this state.

(a) No person arrested upon a warrant shall be delivered over to the agent whom the executive authority demanding him or her appointed to receive him or her unless he or she shall first be taken forthwith before a judge of a court of record in this state, who shall inform him or her of the demand made for his or her surrender and of the crime with which he or she is charged, and that he or she has the right to demand and procure legal counsel and if the prisoner or his or her counsel shall state that he, she, or they desire to test the legality of his or her arrest, the judge of the court of record shall fix a reasonable time to be allowed him or her within which to apply for a writ of habeas corpus. When a writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting attorney of the county in which the arrest is made and in which the accused is in custody, and to the agent of the demanding state.

(b) Any officer who delivers to the agent for extradition of the demanding state a person in his or her custody under the Governor's warrant, in willful disobedience to subsection (a) of this section, shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not more than $1,000 or be imprisoned not more than six months, or both.

(c) The officer or persons 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 any city, county, or regional jail; and the keeper of the jail shall receive and safely keep the prisoner until the officer or person having charge of him or her is ready to proceed on his or her route, the officer or person being chargeable with the expense of keeping.

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 the other state, and who is passing through this state with such a prisoner for the purpose of immediately returning the prisoner to the demanding state may, when necessary, confine the prisoner in any city, county, or regional jail; and the keeper of the jail shall receive and safely keep the prisoner until the officer or agent having charge of him or her is ready to proceed on his or her route, the officer or agent, however, being chargeable with the expense of keeping: Provided, That the officer or agent shall produce and show to the keeper of the jail satisfactory written evidence of the fact that he or she is actually transporting a prisoner to the demanding state after a requisition by the executive authority of the demanding state. The prisoner may not be entitled to demand a new requisition while in this state.

(d) Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under §62-14A-2(g) of this code, with having fled from justice, or with having been convicted of a crime in that state and having escaped from

WV Legislature

confinement, or having broken the terms of his or her bail, probation, or parole, or whenever complaint has been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in the state and that the accused has been charged in the state with the commission of the crime, and, except in cases arising under §62-14A-2(g) of this code, has 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 or her 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 or her to apprehend the person named therein, wherever he or she may be found in this state, and to bring him or her before the same or any other judge, magistrate, or court who or which may be available in, or 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.

(e) The arrest of a person may be lawfully made also by any peace officer, or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or by 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 or her under oath setting forth the ground for the arrest as in the preceding section and thereafter his or her answer shall be heard as if he or she had been arrested on a warrant. Correctional officers may, additionally, make complaint against persons in their custody for whom, they have a reasonable belief, stand accused of crimes, punishable by death or confinement for a term exceeding one year, in the courts of another state.

(f) 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, except in cases arising under §62-14A-2(g) of this code, that he or she has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him or her to the county or regional jail for a time not exceeding 30 days, and 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 subsection (g) of this section, or until he or she shall be legally discharged.

(g) 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, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in a sum as he or she considers proper, conditioned for his or her appearance before him or her at a time specified in the bond, and for his or her surrender, to be arrested upon the warrant of the Governor of this state.

(h) If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or her or may recommit him or her for a further period not to exceed 60 days, or a judge or magistrate may

WV Legislature

again take bail for his or her appearance and surrender as provided in subsection (g) of this section, but within a period not to exceed 60 days after the date of the new bond.

(i) If the prisoner is admitted to bail, and fails to appear and surrender himself or herself according to the conditions of his or her bond, the judge, or magistrate, by proper order, shall declare the bond forfeited and order his or her immediate arrest without warrant if he or she is within this state. Recovery may be had on a bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

(j) If a criminal prosecution has been instituted against the person under the laws of this state and is still pending, the Governor, in his or her discretion, either may surrender him or her on demand of the executive authority of another state or hold him or her until he or she has been tried and discharged or convicted and punished in this state: Provided, That any person under recognizance to appear as a witness in any criminal proceeding pending in this state may in the discretion of the Governor be surrendered on demand of the executive authority of another state or be held until criminal proceeding pending in this state has been determined: Provided, however, That any person who was in custody upon any execution, or upon process in any suit, at the time of being apprehended for a crime charged to have been committed without the jurisdiction of this state, may not be delivered up without the consent of the plaintiff in an execution or suit, until the amount of the execution has been paid, or until the person shall be otherwise discharged from the execution or process.

(k) The guilt or innocence of the accused as to the crime for which he or she 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 this article has been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime.

WV Legislature

§62-14A-5. Return of fugitive from this state.

(a) Whenever the Governor shall demand from the executive authority of another state or from a judge of the Superior Court of the District of Columbia the return to this state of a person found in such state or the District of Columbia who is charged with a crime, who has escaped from confinement, who has been improperly released prior to completion of his or her period of confinement, or who violated the terms of his or her bail, probation, or parole, the Governor shall issue a warrant for the person under the Great Seal of West Virginia, affixed thereon by the Secretary of State to an agent, commanding said agent to receive the person so charged if delivered to him or her and to transport the person to the proper officer of this state or a county of this state in which the offense was committed.

(b) When the return to this state of a person charged with a crime in this state is required, the prosecuting attorney shall present to the Governor his or her 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 or her, the approximate time, place, and circumstances of its commission, the state in which he or she 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 prosecuting 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.

(c) When the return to this state is required of a person who has been previously convicted of a crime in this state and has escaped from confinement, has been improperly released prior to completion of his or her period of confinement, violated the terms of his or her bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the Parole Board, or the Commissioner of the Division of Corrections and Rehabilitation from which escape, improper release, or violation of terms of bail, probation, or parole was committed, 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 the person was convicted, the circumstances of his or her escape from confinement, or of the breach of the terms of his or her bail, probation, or parole, the state in which the person is believed to be, including the location of the person therein at the time application is made.

(d) The application shall be verified by affidavit, shall be executed in duplicate and shall, pursuant to subsection (b) of this section, be accompanied by either: Two certified copies of the indictment returned or information and affidavit filed, or, pursuant to subsection (c) of this section, two certified copies of the complaint made to the judge or justice, stating the offense with which the accused is charged, or the judgment of conviction or of the sentence. The prosecuting attorney, Parole Board, Commissioner of the Division of Corrections and Rehabilitation, or sheriff may also attach such further affidavits and other identification documents in duplicate as he or she shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint,

WV Legislature

information, and affidavits, 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.

WV Legislature

§62-14A-6. Immunity from service of civil process; waiver of extradition proceedings; nonwaiver of rights of state; trial on other charges after return.

(a) 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 until the person has been convicted in the criminal proceedings, or, if acquitted, until the person has had reasonable opportunity to return to the state from which the person was extradited.

(b) 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 or her bail, probation or parole may waive the issuance and service of the warrant provided for in §62-14A-3(a) and §62-14A-3(d) of this code, 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 the person consents to return to the demanding state: Provided, 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 or her rights with respect to the issuance and service of a warrant of extradition and with respect to obtaining a writ of habeas corpus as provided for in §62-14A-4(a) of this code.

If and when such consent has been duly executed it shall forthwith be forwarded to the Office of the Governor. 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, That nothing in this subsection shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

(c) Prior waiver of extradition. — Notwithstanding any other provision of this code, a law-enforcement or corrections agency in the State of West Virginia holding a person who is charged by another jurisdiction with a violation of his or her terms of probation, parole, bail, or other form of conditional release in another jurisdiction which is demanding the return of such person shall immediately deliver the person to the duly authorized agent of the demanding state, and without the requirement of a Governor's warrant, if such person has previously executed a waiver of extradition as a condition of his or her current terms of probation, parole, bail, or other form of conditional release in the demanding state and upon receipt of the following documentation from the demanding state:

(1) A certified copy of the previously executed waiver of extradition being held by the officials in the demanding state or an electronically or electromagnetically transmitted facsimile thereof;

(2) A certified copy of an order or warrant from the demanding state seeking the return of the person or an electronically or electromagnetically transmitted facsimile thereof; and

WV Legislature

(3) A photograph, fingerprints, or other evidence which identifies the person held by the law-enforcement or corrections agency as the person who signed the waiver of extradition and who is named in the order or warrant, or an electronically or electromagnetically transmitted facsimile thereof.

(d) Nothing in this article contained shall be deemed to constitute a waiver by this state of its right, power, or privilege to try such demanded person for an offense 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 offense committed within this state, nor shall any proceedings under this article 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.

(e) After a person has been brought back to this state by, or after waiver of, extradition proceedings, the person may be tried in this state for any offense which the person may be charged with having committed here as well as that specified in the requisition for his or her extradition.

(f) Nothing in this section shall be construed to limit the authority of the Governor, at his or her own instance, to refuse to honor an extradition demand from another jurisdiction.

WV Legislature

§62-14A-7. How costs paid; complainant responsible for.

When the punishment of the crime shall be the confinement of the criminal in the penitentiary, expenses incurred shall be paid from funds available to the Division of Corrections and Rehabilitation. In all other cases such expenses shall be paid out of the county treasury of the county wherein the crime is alleged to have been committed.

The complainant in each case is answerable for all the actual costs and charges, and for the support in prison of any person so committed; and, if the charge for his or her support in prison shall not be paid when demanded, the jailer may discharge such person from prison.

WV Legislature