

HB 2347

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SENATE OF WEST VIRGINIA

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999



# ENROLLED

## House Bill No. 2347

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]



Passed February 24, 1999

In Effect Ninety Days from Passage

**ENROLLED**  
**H. B. 2347**

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)  
[BY REQUEST OF THE EXECUTIVE]

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[Passed February 24, 1999; in effect ninety days from passage.]

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AN ACT to amend and reenact section eleven, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring state law-enforcement and corrections agencies to deliver persons who signed a waiver of extradition prior to their release and who have violated the terms of their probation, parole, bail or other conditional release to the demanding state without the requirement of a governor's warrant; setting forth the documentation required of the demanding state before the person is delivered to the demanding state; and clarifying the governor's authority to refuse a demand at his or her instance where a waiver has been executed.

*Be it enacted by the Legislature of West Virginia:*

That section eleven, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. THE GOVERNOR.**

**§5-1-11. Immunity from service of civil process; waiver of extradition proceedings; nonwaiver of rights of state; trial on other charges after return.**

1 (a) A person brought into this state by, or after waiver of,  
2 extradition based on a criminal charge, shall not be subject to  
3 service of personal process in civil actions until he has been  
4 convicted in the criminal proceedings, or, if acquitted, until he  
5 has had reasonable opportunity to return to the state from which  
6 he was extradited.

7 (b) Any person arrested in this state charged with having  
8 committed any crime in another state or alleged to have escaped  
9 from confinement, or broken the terms of his bail, probation or  
10 parole may waive the issuance and service of the warrant  
11 provided for in subsections (a) and (d), section eight of this  
12 article, and all other procedure incidental to extradition pro-  
13 ceedings, by executing or subscribing in the presence of a judge  
14 of any court of record, within this state a writing which states  
15 that he consents to return to the demanding state: *Provided,*  
16 That before such waiver shall be executed or subscribed by  
17 such person it shall be the duty of such judge to inform such  
18 person of his rights with respect to the issuance and service of  
19 a warrant of extradition and with respect to obtaining a writ of  
20 habeas corpus as provided for in subsection (a), section nine of  
21 this article.

22 If and when such consent has been duly executed it shall  
23 forthwith be forwarded to the office of the governor of this state  
24 and be filed by him in the office of the secretary of state. The  
25 judge shall direct the officer having such person in custody to  
26 deliver forthwith such person to the duly accredited agent or  
27 agents of the demanding state, and shall deliver or cause to be  
28 delivered to such agent or agents a copy of such consent:  
29 *Provided,* That nothing in this subdivision shall be deemed to  
30 limit the rights of the accused person to return voluntarily and  
31 without formality to the demanding state, nor shall this waiver  
32 procedure be deemed to be an exclusive procedure or to limit  
33 the powers, rights, or duties of the officers of the demanding  
34 state or of this state.

35 (c) Prior Waiver of Extradition. Notwithstanding any other  
36 provision of this code, a law-enforcement or correction agency  
37 in the state of West Virginia holding a person who is charged  
38 by another jurisdiction with a violation of his or her terms of

39 probation, parole, bail or other form of conditional release in  
40 another jurisdiction which is demanding the return of such  
41 person shall immediately deliver the person to the duly autho-  
42 rized agent of the demanding state, and without the requirement  
43 of a governor's warrant, if such person has previously executed  
44 a waiver of extradition as a condition of his or her current terms  
45 of probation, parole, bail or other form of conditional release in  
46 the demanding state and upon receipt of the following docu-  
47 mentation from the demanding state:

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

52 (2) A certified copy of an order or warrant from the  
53 demanding state seeking the return of the person or an electron-  
54 ically or electromagnetically transmitted facsimile thereof; and

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

60 (d) Nothing in this article contained shall be deemed to  
61 constitute a waiver by this state of its right, power or privilege  
62 to try such demanded person for an offense committed within  
63 this state, or of its right, power or privilege to regain custody of  
64 such person by extradition proceedings or otherwise for the  
65 purpose of trial, sentence or punishment for any offense  
66 committed within this state, nor shall any proceedings had  
67 under this article which result in, or fail to result in, extradition,  
68 be deemed a waiver by this state of any of its rights, privileges  
69 or jurisdiction in any way whatsoever.

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

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

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Ray Schanover*  
Chairman Senate Committee

*Joe F. Smith*  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Carroll B. Holmes*  
Clerk of the Senate

*Bryson W. Smith*  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
President of the Senate

*Tom H. Emmer*  
Speaker of the House of Delegates

The within *approved* this the *10th*  
day of *March*, 1999.

*Jim Anderson*  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/4/99

Time 9:55 am