

**LETTER OPINION**  
**98-L-202**

December 8, 1998

Mr. Charles Placek  
Interstate Compact Coordinator  
DOCR Field Services Division  
P.O. Box 5521  
Bismarck, ND 58506-5521

Dear Mr. Placek:

Thank you for your letter inquiring whether it is necessary to hold an extradition hearing under the Uniform Extradition and Rendition Act prior to returning an offender to the sending state when the state of North Dakota is supervising the offender under the Interstate Compact for the Supervision of Parolees and Probationers. In your letter, you outline a document titled "Agreement to Return" that offenders must sign before North Dakota will undertake supervision under the compact. The document includes a provision for waiver of extradition. Based on your letter and a conversation with you, at least one sheriff's department has informed you it does not recognize the pre-signed waiver of extradition and requires compliance with the procedures under the Uniform Extradition and Rendition Act.

The Uniform Extradition and Rendition Act (UERA) is found at N.D.C.C. ch. 29-30.3. The Legislative Assembly enacted the UERA in 1985 as the successor to the Uniform Criminal Extradition Act (UCEA). It governs the procedures to be followed in apprehending and processing individuals in North Dakota who are charged with crimes outside of this state. The Uniform Act for the Supervision of Parolees, referred to here as the Interstate Compact, is found at N.D.C.C. ch. 12-56. The Interstate Compact governs the supervision of individuals convicted of an offense in another state that is a party to the compact and placed on probation or released on parole to reside in any other state that is a party to the compact.

In Pierson v. Grant, 527 F.2d 161 (8<sup>th</sup> Cir. 1975) the argument was made that for a waiver of extradition to be valid, there must be compliance with the procedures set out in the UCEA. One of the procedures under the UCEA was that the waiver be made in the presence of a judge and that the judge advise the person of his rights under the Act. In its opinion, the Eighth Circuit referred to the following proviso in Section 25-A of the UCEA:

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(P)rovided, however, that nothing in this Section 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.

Id. at 164.

The Eighth Circuit found there was no basis for concluding that a pre-release waiver of extradition executed as a condition of parole must conform to a procedure which by its own terms is non-exclusive. Id.

There have been other cases upholding advance waivers of extradition in cases involving supervision of parolees and probationers. See, e.g.; Forester v. California Adult Authority, 510 F.2d 58 (8<sup>th</sup> Cir. 1975); U.S. ex rel. Simmons v. Lohman, 228 F.2d 824 (7<sup>th</sup> Cir. 1955); Woods v. Steiner, 207 F.Supp. 945 (D.C. Md. 1962); State v. Linglie, 308 N.W.2d 531 (Neb. 1981); State ex rel. Swyston v. Hedman, 179 N.W.2d 282 (Minn. 1970); Ex parte Johnson, 610 S.W.2d 757 (Tex. Crim. App. 1981); People v. Bynul, 524 N.Y.2d 321 (N.Y. Crim. Ct. 1987); State v. Maglio, 459 A.2d 1209 (N.J. Super. Ct. Law Div. 1983); Schwartz v. Woodahl, 487 P.2d 300 (Mont. 1971); Wright v. Page, 414 P.2d 570 (Okla. Crim. App. 1966); Hunt v. Hand, 352 P.2d 1 (Kan. 1960).

The provisions in the UERA, N.D.C.C. ch. 29-30.3 relating to waiver of extradition are somewhat different than those under the UCEA. N.D.C.C. § 29-30.3-06, provides that an individual may waive the extradition procedures provided for in the UERA if, after being informed by a magistrate of the effect of a waiver, the person waives the right to require a judicial hearing under N.D.C.C. ch. 29-30.3 and consents to return to the other state by executing a written waiver in front of the magistrate. This particular section does not include the same non-exclusive language of Section 25-A of the UCEA. However, pursuant to N.D.C.C. §§ 29-30.3-03 and 29-30.3-03(3), the UERA and the proceedings under it are not exclusive and do not affect the authority of the state to take custody of a person under other provisions of law, including interstate agreements.

In addition, the Interstate Compact acts in lieu of the UERA with respect to the return of parolees and probationers to the sending

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state for parole and probation violations. N.D.C.C. § 12-56-01(3) provides:

That duly accredited officers of a sending state at all times may enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of the state party hereto as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense. (Emphasis added)

See Chandler v. Fontenot, 883 S.W.2d 764 (Tex. App. 1994); People v. Bynul, *supra*. (Interstate Compact does not even require a waiver of extradition by a probationer.)

Therefore, it is my opinion that if a probationer or parolee has entered into a pre-signed waiver as a condition of supervision under the Interstate Compact, it is not necessary to hold proceedings under the UERA prior to returning the parolee or probationer to the sending state pursuant to the Interstate Compact for a parole or probation violation.

Sincerely,

Heidi Heitkamp  
Attorney General

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