

## **IC 35-33-10**

### **Chapter 10. Securing Attendance of Defendants and Uniform Extradition Act**

#### **IC 35-33-10-1**

##### **Defendant in custody; order to appear; defendant at liberty; notice to appear; arrest upon failure to appear**

Sec. 1. (a) When a criminal action is pending against a defendant and the defendant is in the custody of any law enforcement officer, the court may order the law enforcement officer to produce the defendant before the court for prosecution. If the defendant is at liberty within the state as a result of an order releasing him on his own recognizance or on bail, the court may cause the defendant or his attorney to be notified to appear at a designated time. Upon failure to appear after such notification, the court may issue a warrant for the defendant's immediate arrest.

(b) The method selected to secure the attendance of the defendant shall not be a ground for objection at any stage of the criminal proceeding if the method is allowed by this article.

*As added by Acts 1981, P.L.298, SEC.2.*

#### **IC 35-33-10-2**

##### **Defendant confined under judgment or court order or awaiting trial for another offense; order or warrant of detainer**

Sec. 2. (a) When an indictment or information is pending against a defendant confined in this state under a judgment or court order, the court with jurisdiction over the pending criminal action shall, after application by the prosecuting attorney, order that the defendant be produced before the court for prosecution. The defendant shall not be entitled to release pending trial on the indictment or information. The court may order that the defendant be surrendered to the sheriff of the county in which the court issuing the order is located. The court may order the sheriff to convey the defendant from the institution and commit the defendant to the jail or to another place of custody specified in the order. If the proceeding is delayed, the court may order the defendant returned temporarily to the institution until the presence of the defendant before the court is required.

(b) When an indictment or information is pending against a defendant:

(1) confined in an institution within this state pending trial for another offense; or

(2) who has been released by order of another court pending trial before that court for another offense;

the court shall, upon motion of the prosecuting attorney, issue a warrant of detainer to the court before which the other prosecution is pending. The court to which the order of detainer is issued, shall, upon termination of the proceedings before the court, deliver custody of the defendant to the sheriff of the county in which the court issuing the warrant is situated. Upon delivery, the court shall return the warrant to the court of issuance showing such fact. A duplicate

copy of the return shall be served upon the prosecuting attorney who requested the issuance of the warrant.

*As added by Acts 1981, P.L.298, SEC.2.*

### **IC 35-33-10-3**

#### **Uniform Criminal Extradition Act**

Sec. 3. (1) Where appearing in this section, 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, refers to any other state or territory, organized or unorganized, of the United States of America.

(2) Subject to the qualifications of this section 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, a felony, or other crime who has fled from justice and is found in this state.

(3) 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 thereon. 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 must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth.

(4) 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.

(5) A warrant of extradition shall not be issued unless the documents presented by the executive authority making the demand show that:

(a) except in cases arising under subsection 7 of this section, the accused was present in the demanding state at the time of the commission of the alleged crime, and thereafter fled from the state;

(b) the accused is now in this state; and

(c) he is lawfully charged by indictment found or by information filed by a prosecuting officer and supported by affidavit to the facts, or by affidavit made before a magistrate in that state, with having committed a crime under the laws of

that state, or that he has been convicted of a crime in that state and has escaped from confinement or has broken the terms of his bail, probation, or parole, or that the sentence or some portion of it otherwise remains unexecuted and that the person claimed has not been discharged or otherwise released from the sentence.

(6) When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him 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 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. 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 subsection 24 of this section with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

(7) 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 5 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 section 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.

(8) 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; and the warrant must substantially recite the facts necessary to the validity of its issue.

(9) 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, to command the aid of all sheriffs and law enforcement officers in the execution of the warrant, and to deliver the accused subject to the provision of this section, to the duly authorized agent of the demanding state.

(10) 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.

(11) 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, 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.

(12) An officer who recklessly delivers to the agent for extradition of the demanding state a person in his custody under the governor's warrant in disobedience to subsection 11 of this section commits a Class B misdemeanor.

(13) 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.

(14) Whenever any person within this state shall be charged on the oath of any credible person before any judge of this state with the commission of a crime in any other state, and, except in cases arising under subsection 7 of this section, with having fled from justice, or whenever complaint shall have been made before any judge in this state setting forth on the affidavit of any credible person in another state that a treason or felony has been committed in such other state and that the accused has been charged in such state with the commission of the treason or felony, and, except in cases arising under subsection 7 of this section, has fled therefrom and is believed to have been found in this state, the judge shall issue a warrant directed to the sheriff of the county in which the oath or complaint is filed directing him to apprehend the person charged, wherever he may be found in this state, and bring him before the same or any other judge, who may be convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit. A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

(15) 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 (1) year; but when so arrested the accused must be taken before a judge with all practicable speed, and complaint must be made against him under oath setting forth the ground for the arrest as in the last preceding subsection; and thereafter his answer shall be heard as if he has been arrested on warrant.

(16) If from the examination before the judge, 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 subsection 7 of this section, that he has fled from justice, the judge shall commit him to jail by a warrant reciting the accusation for such 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 gives bail as provided in subsection 17 of this section, or until he shall be legally discharged.

(17) 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 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. The prisoner shall not be admitted to bail after issuance of a warrant by the governor of this state.

(18) If the accused is not yet arrested under warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, the judge may discharge him or may recommit him to a further day, or may again take bail for his appearance and surrender, as provided in subsection 17 of this section; 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 may either discharge him, or may require him to enter into a new bond or undertaking, to appear and surrender himself at another day.

(19) If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions 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.

(20) 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.

(21) 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 proceedings after the demand for extradition accompanied by a charge of crime in legal form as above provided 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.

(22) The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

(23) Whenever the governor of this state shall demand a person charged with a crime 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 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.

(24) When the return to this state of a person charged with a crime in this state is required, the prosecuting 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 committal, 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 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. The application shall be verified by affidavit, shall be executed in triplicate, and shall be accompanied by three (3) 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. The prosecuting attorney may also attach such further affidavits and other documents in triplicate as he shall deem proper to be submitted with such application. One (1) copy of the application with the action of the governor indicated by the endorsement thereon and one (1) of the certified copies of the indictment or complaint or information and affidavit 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.

(25) The expenses shall be paid out of the general fund of the county treasury of the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made, as now provided by law, for all necessary travel in returning such prisoner.

(26) A person brought into this state on 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 for which he is returned until he has been convicted in the criminal proceeding, or if acquitted, until he has had ample opportunity to return to the state from which he was extradited.

(27) 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.

(28) This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(29) Nothing in this section contained shall be deemed to constitute a waiver by the state 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 section 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.

(30) This section may be cited as the Uniform Criminal Extradition Act.

*As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.178-1984, SEC.1.*

#### **IC 35-33-10-4**

##### **Agreement on detainees; defendants confined in other jurisdiction of United States**

Sec. 4. Securing attendance of defendants confined as prisoners in institutions of other jurisdictions of the United States—Agreement on detainees.

###### Text of the Agreement of Detainers

The contracting states solemnly agree that:

###### Article 1

The party states find that charges outstanding against a prisoner, detainees based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainees based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainees, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

###### Article 2

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time he initiates a request for final disposition pursuant to Article 3 of this section or at the time that a request for custody or availability is initiated pursuant to Article 4 hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article 3 or Article 4 hereof.

###### Article 3

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or

complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty (180) days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of correction or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of correction or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, information or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of correction or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of

imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

#### Article 4

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article 5 (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further that there shall be a period of thirty (30) days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty (120) days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or

ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article 5 (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

#### Article 5

(a) In response to a request made under Article 3 or Article 4 hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article 3 of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article 3 or Article 4 hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations of complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by

this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivision, as to the payment of costs, or responsibilities therefor.

#### Article 6

(a) In determining the duration and expiration dates of the time periods provided in Articles 3 and 4 of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

#### Article 7

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

#### Article 8

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

#### Article 9

1. This agreement shall be liberally construed so as to effectuate

its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

2. The phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this state, mean any court with criminal jurisdiction.

3. All courts, departments, agencies, officers and employees of this state and its political subdivision are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purposes.

4. Escape from custody while in another state pursuant to the agreement on detainers shall constitute an offense against the laws of this state to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provisions of the agreement on detainers and shall be punishable in the same manner as an escape from said institution.

5. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate hereof whenever so required by the operation of the agreement on detainers.

6. The governor is hereby authorized and empowered to designate an administrator who shall perform the duties and functions and exercise the powers conferred upon such person by Article 7 of the agreement on detainers.

7. In order to implement Article 4(a) of the agreement on detainers, and in furtherance of its purposes, the appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request notify the prisoner and the governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of said request. The authorities having custody of the prisoner shall also advise him in writing of his rights to counsel, to make representations to the governor within thirty (30) days, and to contest the legality of his delivery.

*As added by Acts 1981, P.L.298, SEC.2.*

### **IC 35-33-10-5**

#### **Defendants confined in federal institutions**

Sec. 5. Securing Attendance of Defendant Confined in Federal Institutions. (1) A defendant against whom a criminal action is

pending in a court of record of this state, and who is confined in a federal prison or other institution either within or outside this state, may, with the consent of the attorney general of the United States, be produced in such court for the purpose of criminal prosecution, pursuant to the provisions of:

- (a) Section four thousand eighty-five of title eighteen of the United States Code as in effect on July 26, 1973; or
- (b) subsection 2 of this section.

(2) When such a defendant is in federal custody as specified in subsection 1, a court in which the criminal action against such defendant is pending, may, upon application of the prosecuting attorney of such county, issue a certificate, known as a writ of habeas corpus ad prosequendum, addressed to the attorney general of the United States, certifying that such defendant has been charged by indictment or information filed against him in the specified court with the offense or offenses alleged therein, and that attendance of the defendant in such court for the purpose of criminal prosecution thereon is necessary in the interest of justice and requesting the attorney general of the United States to cause such defendant to be produced in such court, under custody of a federal public servant, upon a designated date and for a period of time necessary to complete the prosecution. Upon issuing such a certificate, the court may deliver it, or cause or authorize it to be delivered, together with a certified copy of the indictment or information upon which it is based, to the attorney general of the United States or to his representative authorized to entertain the request.

*As added by Acts 1981, P.L.298, SEC.2.*

### **IC 35-33-10-6**

#### **Defendants outside United States**

Sec. 6. Securing Attendance of Defendants Who Are Outside The United States. (1) When a criminal action for a crime committed in this state is pending in a court of this state with jurisdiction over the crime against a defendant who is in a foreign country with which the United States has an extradition treaty, and when the indictment or information charges a crime which is specified in such treaty as an extraditable one, the prosecuting attorney of the county in which such crime was allegedly committed may make an application to the governor, requesting him to make an application to the president of the United States to institute extradition proceedings for the return of the defendant to this country and state for the purpose of prosecution of such action. The prosecuting attorney's application must comply with any rules, regulations and guidelines established by the governor for such applications and must be accompanied by all the documents required by such rules, regulations and guidelines.

(2) Upon receipt of the prosecuting attorney's application, the governor if satisfied that the defendant is in the foreign country in question, that the crime charged is an extraditable one pursuant to the treaty in question, and that there are no factors or impediments which in law preclude such an extradition, may in his discretion make an

application, addressed to the secretary of state of the United States, requesting that the president of the United States institute extradition proceedings for the return of the defendant from such foreign country. The governor's application must comply with any rules, regulations and guidelines established by the secretary of state for such applications and must be accompanied by all the documents required by such rules, regulations and guidelines.

(3) If the governor's application is granted and the extradition is achieved or attempted, all expenses incurred therein must be borne by the county from which the application emanated.

(4) The provisions of this section apply equally to extradition or attempted extradition of a person who is a fugitive following the entry of a judgment of conviction against him in a criminal court of this state.

*As added by Acts 1981, P.L.298, SEC.2.*

### **IC 35-33-10-7**

#### **Corporate defendants**

Sec. 7. Securing Attendance of Corporate Defendants. (1) The court attendance of a corporation for purposes of commencing or prosecuting a criminal action against it may be accomplished by the issuance and service of a summons.

(a) A corporation shall be deemed in attendance for purposes of commencing or prosecuting a criminal action against it whenever an officer, director or counsel for such corporation is present. If such officer, director or counsel fails or refuses to appear, the court shall proceed with trial and judgment.

*As added by Acts 1981, P.L.298, SEC.2.*