



Extradition & Rendition: Terms, Process & Paperwork


ANGIE WEST BYRD, NCCP
EXTRADITION SECRETARY
NORTH CAROLINA DEPARTMENT OF JUSTICE
(919) 716-6578
ABYRD@NCDOJ.GOV

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Primary Sources of Extradition Law


- Extradition Clause of the U.S. Constitution
 - Art. IV, § 2, cl. 2
- The Federal Extradition Act of 1793
 - 18 U.S.C. §§ 3181-3195
- Uniform Criminal Extradition Act of 1936
 - UCEA
 - N.C. Gen. Stat. §§ 15A-721 thru 750
 - Two states have not adopted the UCEA but have similar laws – South Carolina and Mississippi



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Extradition Clause Art. IV, § 2, cl.2

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on the demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction.



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Federal Act vs. UCEA

<h4 style="text-align: center;">Federal Act</h4> <ul style="list-style-type: none"> *Charged with treason, felony or other crime *Fugitives only *No process established for the Arrest and Rendition 	<h4 style="text-align: center;">UCEA</h4> <ul style="list-style-type: none"> *Felony/Misdemeanor, Escaped, & Juveniles Absconded, *Fugitives and Nonfugitives *Procedure for Arrest & Rendition, e.g., Fugitive Arrest, Arraignment, Identification Hearing, Writ of Habeas Corpus
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Duty of Asylum State Governor

The UCEA provides:

- Subject to provisions of this act, 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.

Mandatory & Summary procedure in Asylum State

- See *Puerto Rico v. Brandstad*, 483 U.S. 219 (1987)

Asylum State has no discretionary power re: extradition of fugitive

- Discretionary with Nonfugitive
- See *Michigan v. Doran*, 439 U.S. 282 (1978)

Determination of Guilt not an Issue

Alleged Violation of Constitutional Rights if Extradited not an Issue

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Basic Principles & Terms of Extradition

Extradition – Mandatory & Summary Procedure; Part of the Arrest Process

Intent – Return those charged with a crime to the Demanding State as swiftly as possible for prosecution

Purpose – To preclude any State from becoming a sanctuary for fugitives/nonfugitives

Application for Requisition – Demanding State DA's formal request for extradition to Demanding State's Governor

Governor's Requisition – The Demanding State's Governor's formal request for extradition to the Asylum State's Governor to extradite fugitive/nonfugitive

Governor's Warrant of Arrest and Rendition – Arrest warrant issued by Asylum State's Governor upon receipt of Demanding State's Governor's Requisition for the arrest and rendition of fugitive/nonfugitive


Waiver – Consent to extradition without Governor's Warrant

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ACCUSED

PART I Asylum State's Pre-Governor's Warrant Process

Fugitive's Arrest, Fugitive Complaint, Arraignment, Waiver, Commitment, Bail before Issuance of Governor's Warrant



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When a fugitive is found, Asylum State authorities may:

- Arrest fugitive without warrant
- Arrest fugitive with warrant
- Conduct surveillance and arrest fugitive upon issuance of Governor's Warrant
- Do nothing at all because Demanding State will not Extradite

Initial Decision by Asylum State

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Arrest without Warrant

COME BACK WITH A WARRANT.

Reasonable Information

- Fugitive is charged with crime punishable by death or imprisonment for a term exceeding one year (felony)

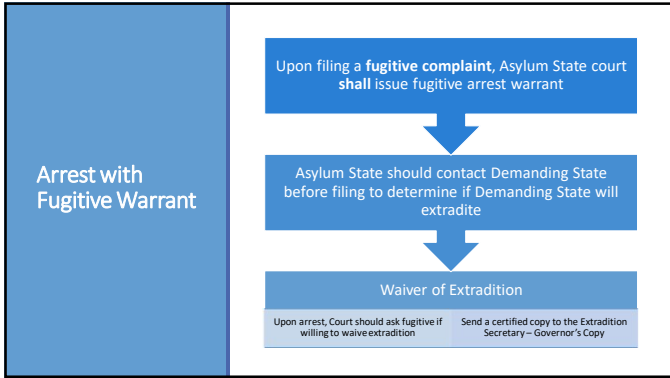
Demanding State's **Arrest Warrant** sufficient reasonable information (not warrant of arrest in Asylum State)

Once arrested, fugitive must be taken before a magistrate with **all practicable speed**

- See N.C. Gen. Stat. § 15A-734
- A judicial determination of Probable Cause within 48 hours will satisfy the requirement of Gerstein. See *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991)

Fugitive Complaint must be filed under oath setting forth the ground(s) for arrest

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Pre-signed waiver

There is no statute regarding pre-signed waivers in North Carolina. The Office of the Governor and the North Carolina Department of Justice take the same stance as the National Association of Extradition Officials – **Pre-signed waivers should be accepted.**

If there is a pre-signed waiver, a fugitive should be brought before a magistrate, told of the pre-signed waiver and held without a bond. Notify demanding state for pickup.

Signature

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Arraignment

Fugitive must be arraigned on fugitive complaint with “all practicable speed” – N.C. Gen. Stat. § 15A-734

- Reason for Arrest – criminal matter pending in Demanding State
- Statutory right to counsel
- Right to have Governor’s Warrant issued
- Right to Waive issuance of Governor’s Warrant
- Fugitive should be asked if willing to waive extradition

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Commitment Order N.C. Gen. Stat. §§ 15A-735 & 737



- Asylum State court typically orders:
- Fugitive placed in custody for 30 days for issuance of Governor's Warrant
 - Additional 60 days if needed
 - End of 90 days, Asylum Court may dismiss the matter unless Governor's Warrant has been issued

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Bail

Fugitive may be released upon bail unless:

- Charged with crime punishable by death or life imprisonment – N.C. Gen. Stat. § 15A-736
- Escaped Felon (in some states)
- Parolee who has Absconded (in some states)
- Fugitive has Waived Extradition – N.C. Gen. Stat. § 15A-746
 - "The judge or clerk of superior court 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..."
 - See *Attorney General's Opinion*, 1980 N.C. AG LEXIS 23 (1980)

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Bail

- Served with Governor's Warrant
 - Office of the Governor agrees with National Association of Extradition Officials' Resolution Opposing Bail
 - Executive Process not Judicial Warrant
 - See *State v. Cronauer*, 65 N.C. App. 449 (1983)
- Once Waiver is signed or Habeas Corpus denied, person belongs to the Demanding State and must be held for transport.

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Demanding State's Process: Application for Governor's Requisition

PART II

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(a) When the return to this State of a person charged with crime in this State is required, the prosecuting attorney 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 commission, 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.

(b) When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement or broken the terms of his bail, probation, post-release supervision, or parole, the prosecuting attorney of the county in which the offense was committed, the Post-Release Supervision and Parole Commission, the Director of Prisons, the Director of Community Corrections, or sheriff of the county from which escape was made, 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 he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

(c) The application shall be **verified** by affidavit, shall be executed **in duplicate** and shall be accompanied **by two certified copies** of the indictment returned, or information and affidavit filed, or of the complaint **made to the judge or magistrate**, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. A copy of all papers shall be forwarded with the Governor's requisition.

Application for Issuance of Requisition
N.C. Gen. § 15A-743

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Application for Requisition

- Available at www.nccourts.gov choose "Forms" and under subject choose "Governor"
- Two types of written application for extradition
 - Person **charged** with crime – Form Gov1
 - Form Gov1B – Warrant & Affidavit
 - Form Gov1C – Indictment
 - All signed by Clerk of Superior Court
 - Fugitive **convicted** of crime – Form Gov2
 - Supporting Gov2 forms as appropriate
- Certification Form – Form Gov3
 - Judge certifies Clerk's signature and Clerk certifies Judge's signature

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Application for Requisition

- Written application prepared by Demanding State's prosecutor
- Name and known alias(es) of person set forth
- Agent nominated to return person to Demanding State
 - Name Sheriff, not transport company or DPS
 - Must be female named to transport female fugitive
- Location where person is found in Asylum State
 - Name & Address of jail or address of residence if person has made bail
- Certified by prosecutor that extradition is not instituted to enforce civil claim in Demanding State.
 - Nonsupport cases

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Application for Requisition

Circumstances of crime, escape, parole, probation or post-release supervision violation

- Can be charged with additional crimes once returned to Demanding State – N.C. Gen. Stat. § 15A-748

Fugitive or Nonfugitive

- Fugitive: Person located in one state, committed a crime, and fled the state
- Nonfugitive: Person located in another state, committed an act which resulted in a crime in a different state

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Fugitive

Nonfugitive

The image shows two forms side-by-side. The left form is titled 'Fugitive' and the right form is titled 'Nonfugitive'. Both forms are titled 'APPLICATION FOR REQUISITION (FORM 1)'. They contain detailed instructions and legal references regarding extradition. A graphic of a 'Fugitive' sign is placed between the two forms.

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Nonfugitive Extraditions

- Extradition is used when subject committed crime in the Demanding State while in another State
- Modern Communication helps facilitate the commission of crimes across state lines
- Types of Nonfugitive Extraditions
 - Nonsupport
 - Transfer of Funds or Drugs
 - Identity Theft
 - Internet Threats
 - "Sexing" with minors
- Application should **not** have reference to fugitivity
- Governor's Discretion
 - See N.C. Gen. Stat. § 15A-726, "The Governor of this State **may** also surrender..."

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Certified copy of charging document

- Such as an Indictment, Information, Complaint & Sworn Affidavit, or Sentencing/Disposition Order
- Certified Copy of any Warrant for Arrest issued
- If Warrant is the **only** document, must be supported by Affidavit of Probable Cause – sworn before issuing MAGISTRATE/JUDGE

Application for Requisition

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Warrant

APPLICATION FOR REQUISITION

1. That the commission of the crime in this State is a crime in the State of North Carolina, and that the person of said individual is being sought for the purpose of...

2. That the individual named in this application is the person named in the charging document...

3. That the individual named in this application is the person named in the charging document...

4. That the individual named in this application is the person named in the charging document...

5. That the individual named in this application is the person named in the charging document...

6. That the individual named in this application is the person named in the charging document...

7. That the individual named in this application is the person named in the charging document...

8. That the individual named in this application is the person named in the charging document...

9. That the individual named in this application is the person named in the charging document...

10. That the individual named in this application is the person named in the charging document...

Indictment

APPLICATION FOR REQUISITION

1. That the commission of the crime in this State is a crime in the State of North Carolina, and that the person of said individual is being sought for the purpose of...

2. That the individual named in this application is the person named in the charging document...

3. That the individual named in this application is the person named in the charging document...

4. That the individual named in this application is the person named in the charging document...

5. That the individual named in this application is the person named in the charging document...


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7. That the individual named in this application is the person named in the charging document...

8. That the individual named in this application is the person named in the charging document...

9. That the individual named in this application is the person named in the charging document...

10. That the individual named in this application is the person named in the charging document...



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Affidavit of Probable Cause

This document **must** include the following:

- Name & Agency of Officer
- Facts supporting the warrant – Do **NOT** use the same language from the warrant. Need the same facts orally sworn to before the magistrate to support the issuance of the warrant for arrest.
- A statement showing the magistrate found probable cause, should be included prior to the signature by magistrate:
 - "I, the undersigned, based on the foregoing find that there is probable cause to support the warrant for arrest against the above-named defendant."

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Affidavit of Probable Cause

The image shows a screenshot of a North Carolina Affidavit of Probable Cause form. A callout box with the text "GET THE FACTS" is overlaid on the form. The form includes fields for the State of North Carolina, the name of the officer, and the agency. The main body of the form contains a detailed narrative of the facts supporting the probable cause for the arrest of the defendant.

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"Substantially" Charge

Documents must "substantially" charge the fugitive with having committed a crime under the Demanding State's laws.

- You cannot extradite on Capias alone
- Habeas law says "substantially" charged with a crime
- "Substantially charge" means there must be a showing of probable cause.
 - See *Michigan v. Doran*, 439 U.S. at 285 (1978)

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Essential Documents

- Identification Documents
 - Photograph – Many states require an Affidavit of Identification with all photographs
 - Do not send a photograph without any identifying information
 - Certified Fingerprints
 - Physical Description
 - Do not use any documents from CILeads
- Copies of statute(s) for crime(s) listed
 - Can be printed from General Assembly's website
 - If common law crime, use "North Carolina Crimes: A Guidebook on the Elements of Crime" to show punishment level.

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NC Photo

North Carolina Department of Public Safety
Division of Adult Correction

NC DOOR: 143 Height: 57
Race: WHITE Weight: 148
Gender: MALE Hair Color: BRN/DKBRN
Date of Birth: 04/1984 Eye Color: BRN/DKBRN

Out of State Photo

ID Affidavit

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Checklist of Documents

- ✓ **Application** - fugitive or non-fugitive, spelling of subject's name correct, include all aliases, location of fugitive, crime(s) charged, name/title of agent, and verified signature
- ✓ **Court Certification of Documents** - clerk and judge's signatures to certify documents and cross-certify one another
- ✓ **Charging Document** - amended complaint sworn before a magistrate, indictment, information
- ✓ **Identity** - Photo and/or Fingerprints
- ✓ **Warrant** - supported by current charging document(s)
- ✓ **Statute(s)** - Statute(s) of charged offense(s) listed in application and charging document(s)

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Application for Requisition READY FOR REVIEW

- Executed - 5 Originals
 - 1 to be kept in your office
 - 4 to be mailed to Extradition Secretary
- Must include Cover Letter to include the following information for the person to be notified when fugitive/nonfugitive is ready for transport
 - Name & Agency
 - Address
 - Phone Number
 - Fax Number
 - Email Address
- Be cognizant of Time Limits in Asylum State

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Review of Application

- Demanding State's Governor's Office
- Demanding State's Attorney General's Office
- Secretary of State (in some states) – Authenticates Court's Verification of Clerk's Certifications and/or attest Governor's Signature
- Upon which the Governor will issue a Requisition to the Asylum State's Governor

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PART III

Asylum State's Process: Issuance of Governor's Warrant

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Goal

The issuance of the **Governor's Warrant of Arrest and Rendition** by the Asylum State's Governor pursuant to a proper demand for extradition made by Demanding State's Governor

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Upon receipt of formal requisition, Asylum State's Governor:

- **Reviews** requisition, application for requisition, and supporting documents for sufficiency and accuracy
- **Requests** additions or changes if necessary from Demanding State
- **Forwards** requisition, application for requisition and supporting documents to Attorney General for review

Receipt of Formal Requisition

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Issuance of Governor's Warrant
N.C. Gen. Stat. § 15A-727

If Demanding State's requisition, application and supporting documents are in order:

- Asylum State's Governor issues **Governor's Warrant**
- Sent to local law enforcement
- Local charges pending – Governor's Warrant may be held in abeyance
 - See N.C. Gen. Stat. § 15A-739
- Fugitive cannot avoid local charges with Waiver
- If they receive an **active DAC** sentence from local charges:
 - Send Certified Copy of Waiver with them to DAC
 - Notify Extradition Secretary of DAC sentence
 - Send **entire** Governor's Warrant packet back to Extradition Secretary

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GOVERNOR'S WARRANT

A Fugitive Warrant must be dismissed after 90 days

- N.C. Gen. Stat. §§ 15A-735 & 15A-737
- The dismissal of the first fugitive warrant is not a bar to a second fugitive warrant.

A Governor's Warrant is an arrest warrant. If a fugitive warrant has been dismissed – the Governor's Warrant can and should be used to arrest the fugitive again.

- **A fugitive warrant dismissal has no bearing upon a Governor's Warrant.**
- A second Governor's Warrant can be issued in certain circumstances – technical errors, re-arrest on new fugitive warrant, etc.

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Arrestment on Governor's Warrant

Upon service & arrest:

- Fugitive must be arraigned **forthwith**
- Fugitive must be advised
 - Demand has been made for extradition
 - Statutory right to counsel
 - Right to challenge warrant – **Writ of Habeas Corpus**
- Failure to bring them before a Judge to be Advised is a Class 2 **misdemeanor**
 - See N.C. Gen. Stat. § 15A-731
- **Competence** to assist counsel in extradition proceedings may be raised



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Writ of Habeas Corpus N.C. Gen. Stat. § 15A-730

Fugitive may only challenge legality of Governor's Warrant on **four issues**:

- Extradition documents not legally sufficient
- Identity – Not the person wanted in Demanding State
- Not substantially charged with a crime in the Demanding State
- Not a "fugitive"

See *Michigan v. Doran*, 439 U.S. at 289 (1978)

Please notify Extradition Secretary if a Writ of Habeas Corpus is filed.

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Habeas Corpus Process

The District Attorney's Office will handle habeas proceedings.

Please contact Extradition Secretary for habeas materials to use in a habeas hearing.

- A judge should give a reasonable period within which to file – 10 days
- Governor's Warrant *prima facie* evidence all requirements of extradition have been met
- Once *prima facie* showing has been made, **fugitive has burden of clear and convincing evidence**
- Strict rules of evidence inapplicable
- Affidavits, Documentation, Photographs, Fingerprints
- If writ denied, fugitive may appeal

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Extradition Order

- Upon arraignment and/or denial of writ of habeas corpus
 - Asylum State court orders fugitive extradited
 - Sets date for pick-up
 - 18 U.S.C. § 3182 "may be discharged after 30 days"
 - Fugitive must file writ of habeas requesting release
 - Demanding State is notified fugitive is available for pick-up
 - Fugitive is returned to Demanding State for prosecution
 - Fugitive may be tried for additional crimes in Demanding State, not specified in requisition
 - See N.C. Gen. Stat. § 15A-748

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Governor's Warrant Recall
N.C. Gen. Stat. § 15A-741

- A Governor's Warrant may **only** be recalled by the Extradition Secretary upon information received from the Extradition Coordinator in the Demanding State
- Executive Process –
 - Not Judicial
 - Cannot be recalled by a prosecutor
- Comity amongst Governors
- If you have requested a Governor's Requisition and subsequently decide not to prosecute or you no longer need a Governor's Warrant – Notify the Extradition Secretary **immediately** to effectively Withdraw the Governor's Requisition and Recall the Governor's Warrant

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Governor's Warrant Process

STATE OF NORTH CAROLINA

By the Governor or Chief Justice or the State or North Carolina or State State

Flowchart:

- Governor's Advisory Council or Council on Judicial Administration reviews papers for legal sufficiency
 - Yes**: Governor's Hearing (Early Requested) (Not Requested)
 - Archie State Governor Issues Warrant (Executive or Governor's Warrant)
 - Warrant sent to appropriate State or Local Law Enforcement Agency in Archie State (Agency Holding Fugitive)
 - Fugitive Returned on Governor's Warrant
 - Fugitive Arranged on Governor's Warrant
 - No**: Habeas Corpus Filed (Denied)
 - Authorities in Demanding State Notified of Fugitive's Availability for Return
 - Demanding State Agent's Arrive to pick up Fugitive
 - Fugitive Returned to Demanding State
 - Fugitive Now Available for Prosecution in Demanding State

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Extradition Complete

- Receipt by Agent** – Once ordered back to Demanding State, agents from Demanding State must fill out bottom portion on the back of Governor's Warrant
- Return Original Governor's Warrant with ALL Supporting Documents** – Clerks may maintain a copy of Governor's Warrant and all supporting documentation, **all originals must be returned** to Extradition Secretary
- Fugitive Received by NC** – Email Extradition Secretary to notify of fugitive's arrival in North Carolina.

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Alternatives to Extradition

- Executive Agreements**
 - Governor's policy to only use when charged with a capital crime
 - Or when a State has not signed on to the Interstate Agreement on Detainers
- Writs**
- Interstate Compact for Juveniles**
- Civil Commitments**

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State of North Carolina Extradition Manual

Third Edition, 2013

Robert L. Farb
with Corinne Ensh, former Extradition Secretary

Pat McCrory, Governor
Angie West, Extradition Secretary

UNC
UNIVERSITY OF NORTH CAROLINA

Additional Resource:

- Available from UNC School of Government
- To order online:
• www.sog.unc.edu/pubs
- Email:
• sales@sog.unc.edu
- Phone:
• (919) 966-4119

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EXTRADITION

ANGIE WEST BYRD, NCCP
EXTRADITION SECRETARY
NORTH CAROLINA DEPARTMENT OF JUSTICE
(919) 716-6578
ABYRD@NCDOJ.GOV

COME BACK WITH A WARRANT!

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