

CHAPTER 832
UNIFORM CRIMINAL EXTRADITION ACT

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" **§832-1 Definitions.** Where appearing in this chapter, the term "governor" includes any person performing the functions of governor by authority of the laws of this State. The term "executive authority" includes the governor, and any person performing the functions of governor in any state, and the term "state" includes any state other than this State, the District of Columbia, or a Territory, organized or unorganized, of the United States. The term "interstate" means between this State and any other state. The term "prosecuting officer" or "prosecuting attorney" includes the attorney general of this State, any county attorney or prosecuting attorney of any county of this State. The term "peace officer" includes any officer authorized to serve process in criminal proceedings. [L 1941, c 99, §1; RL 1945, §10631; RL 1955, §250-1; HRS §713-1; ren L 1972, c 9, pt of §1]

Cross References

Extradition of persons of unsound mind, see chapter 337.

Case Notes

The Federated States of Micronesia is a "territory of the United States" for purposes of extraditing criminals. 67 H. 259, 686 P.2d 16 (1984).

" **§832-2 Fugitives from justice; duty of governor.** Subject to this chapter, 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 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. [L 1941, c 99, §2; RL 1945, §10632; RL 1955, §250-2; HRS §713-2; ren L 1972, c 9, pt of §1]

Case Notes

See 5 H. 573 (1886).

" **§832-3 Form of demand.** No demand for the extradition of a person charged with crime in any state shall be recognized by the governor unless in writing alleging, except in cases arising under section 832-6, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter the accused 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 there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of 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 the person's bail, probation, or parole. 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 of indictment, information, affidavit, judgment of conviction, or sentence must be authenticated by the executive authority making the demand. [L 1941, c 99, §3; RL 1945, §10633; RL 1955, §250-3; HRS §713-3; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§832-4 Governor may investigate case.** When a demand is made upon the governor by the executive authority of any state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any other prosecuting officer in this State to investigate or assist in investigating the demand, and to report to the governor the situation and circumstances of the person so demanded, and whether the person ought to be surrendered. [L 1941, c 99, §4; RL 1945, §10634; RL 1955, §250-4; HRS §713-4; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§832-5 Extradition of persons imprisoned or awaiting trial in any state or who have left the demanding state under compulsion.** When it is desired to have returned to this State a person charged in this State with a crime, and the person is imprisoned or is held under criminal proceedings then pending against the person in any state, the governor of this State may agree with the executive authority of the state for the extradition of the person before the conclusion of the proceedings or the person's term of sentence in the state, upon condition that the person be returned to the state at the expense of this State or any county thereof 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 state any person in this State who is charged in the manner provided in section 832-3 with having violated the laws of the state whose executive authority is making the demand, even though the person left the demanding state involuntarily. [L 1941, c 99, §5; RL 1945, §10635; RL

1955, §250-5; HRS §713-5; ren L 1972, c 9, pt of §1; gen ch 1985]

Case Notes

Re "due process" requirements for out-of-state transfers of prisoners. 387 F. Supp. 912 (1975), 396 F. Supp. 196 (1975).

" **§832-6 Extradition of persons not present in demanding state at time of commission of crime.** The governor of this State may also surrender, on demand of the executive authority of any state, any person in this State charged in the state in the manner provided in section 832-3 with committing an act in this State, or in another state, intentionally resulting in a crime in the state whose executive authority is making the demand, and this chapter 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. [L 1941, c 99, §6; RL 1945, §10636; RL 1955, §250-6; HRS §713-6; ren L 1972, c 9, pt of §1]

" **§832-7 Issue of governor's warrant of arrest; its recitals.** If the governor decides that the demand should be complied with, the governor shall sign a warrant of arrest, which shall be sealed with the great seal of the State, and be directed to any peace officer or other person whom the governor may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. [L 1941, c 99, §7; RL 1945, §10637; RL 1955, §250-7; HRS §713-7; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§832-8 Manner and place of execution.** The warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where the accused may be found within this 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 this chapter to the duly authorized agent of the demanding state. [L 1941, c 99, §8; RL 1945, §10638; RL 1955, §250-8; HRS §713-8; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§832-9 Authority of arresting officer.** 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. [L 1941, c 99, §9; RL 1945, §10639; RL 1955, §250-9; HRS §713-9; ren L 1972, c 9, pt of §1]

" **§832-10 Rights of accused person; application for writ of habeas corpus.** No person arrested upon the warrant shall be delivered over to the agent whom the executive authority demanding him has appointed to receive him unless he shall first be taken before a judge of a court of record in this State, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel states that he or they desire to test the legality of his arrest, the judge of the court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When the writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer 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. [L 1941, c 99, §10; RL 1945, §10640; RL 1955, §250-10; HRS §713-10; ren L 1972, c 9, pt of §1]

Case Notes

Scope of habeas corpus proceeding to resist extradition. 48 H. 508, 405 P.2d 309 (1965).

" **§832-11 Penalty.** Any officer who delivers to the agent for extradition of the demanding state a person in the officer's custody under the governor's warrant, in wilful disobedience to section 832-10 shall be guilty of a misdemeanor and, on conviction, shall be fined not more than \$1,000 or be imprisoned not more than six months, or both. [L 1941, c 99, §11; RL 1945, §10641; RL 1955, §250-11; HRS §713-11; ren L 1972, c 9, pt of §1; gen ch 1985]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 706-663.

" **§832-12 Confinement in jail when necessary.** 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 the jail of any county through which he may pass; and the keeper of the

jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such 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 such 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 the jail of any county through which he may pass; and the keeper of the jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such 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 is actually transporting the prisoner to the demanding state after a requisition by the executive authority of the demanding state. The prisoner shall not be entitled to demand a new requisition while in this State. [L 1941, c 99, §12; RL 1945, §10642; RL 1955, §250-12; HRS §713-12; ren L 1972, c 9, pt of §1]

" **§832-13 Arrest prior to requisition.** Whenever any person within this State is charged on the oath of any credible person before any judge of this State with the commission of any crime in any state and, except in cases arising under section 832-6, with having 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 bail, probation, or parole, or whenever complaint has been made before any judge in this State setting forth on the affidavit of any credible person in any state that a crime has been committed in such state and that the accused has been charged in such state with the commission of the crime and except in cases arising under section 832-6, 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 bail, probation, or parole and is believed to be in this State, the judge shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this State, and to bring him before the same or any other judge 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. [L 1941, c 99, §13; RL 1945, §10643; RL 1955, §250-13; HRS §713-13; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1]

" **§832-14 Arrest without a warrant.** 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 imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge with all practicable speed and complaint must be made against the accused under oath setting forth the ground for the arrest as in section 832-13; and thereafter the accused's answer shall be heard as if the accused had been arrested on a warrant. [L 1941, c 99, §14; RL 1945, §10644; RL 1955, §250-14; HRS §713-14; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§832-15 Commitment to await requisition; bail.** If from the examination before the judge it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under section 832-6, that the person has fled from justice, the judge must, by a warrant reciting the accusation, commit the person to the county jail for such a time not exceeding thirty 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 section 832-16, or until the accused shall be legally discharged. [L 1941, c 99, §15; RL 1945, §10645; RL 1955, §250-15; HRS §713-15; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§832-16 Bail; in what cases; conditions of bond.** 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 in this State may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as the judge deems proper, conditioned for the person's appearance before the judge at a time specified in the bond, and for the person's surrender, to be arrested upon the warrant of the governor of this State. [L 1941, c 99, §16; RL 1945, §10646; RL 1955, §250-16; HRS §713-16; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§832-17 Extension of time of commitment; adjournment.** 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 may discharge the accused or may recommit the accused for a further period not to exceed sixty days, or a judge may again take bail for the accused's appearance and surrender, as provided in section 832-16, but within a period not to exceed sixty days after the date of new bond. [L 1941, c 99, §17; RL 1945, §10647; RL 1955, §250-17; HRS §713-17; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§832-18 Forfeiture of bail.** If the prisoner is admitted to bail, and fails to appear and surrender oneself according to the conditions of the prisoner's bond, the judge, by proper order, shall declare the bond forfeited and order the prisoner's immediate arrest without warrant if the prisoner be within this State. Recovery may be had on the bond in the name of the State as in the case of other bonds given by the accused in criminal proceedings within this State. [L 1941, c 99, §18; RL 1945, §10648; RL 1955, §250-18; HRS §713-18; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§832-19 Persons under criminal prosecution in this State at time of requisition.** If a criminal prosecution has been instituted against such person under the laws of this State and is still pending, the governor, in the governor's discretion, either may surrender the person on demand of the executive authority of any state or hold the person until the person has been tried and discharged or convicted and punished in this State. [L 1941, c 99, §19; RL 1945, §10649; RL 1955, §250-19; HRS §713-19; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§832-20 Guilt or innocence of accused, when inquired into.** The guilt or innocence of the accused as to the crime of which the accused 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 above provided has been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime. [L 1941, c 99, §20; RL 1945, §10650; RL 1955, §250-20; HRS §713-20; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§832-21 Governor may recall warrant or issue alias.** The governor may recall the governor's warrant of arrest or may issue another warrant whenever the governor deems proper. [L 1941, c 99, §21; RL 1945, §10651; RL 1955, §250-21; HRS §713-21; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§832-22 Fugitives from this State; duty of governor.**

Whenever the governor of this State demands a person charged with crime or with escaping from confinement or breaking the terms of the person's bail, probation, or parole in this State, from the executive authority of any state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive the demand under the laws of the United States, the governor shall issue a warrant under the great seal of this State, to some agent, commanding the agent to receive the person so charged if delivered to the agent and convey the person to the proper officer of the county in this State in which the offense was committed. [L 1941, c 99, §22; RL 1945, §10652; RL 1955, §250-22; HRS §713-22; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§832-23 Application for issuance of requisition; by whom made; contents.**

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 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.

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, or parole, the prosecuting attorney of the county in which the offense was committed, the Hawaii paroling authority, the director of public safety, the sheriff, or chief of police of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of the 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.

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, stating the

offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, paroling authority, director of public safety, sheriff, or chief of police may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with the 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, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the lieutenant governor to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition. [L 1941, c 99, §23; RL 1945, §10653; RL 1955, §250-23; am L Sp 1959 2d, c 1, §§9, 20; am L 1963, c 34, §1; HRS §713-23; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1; am L 1976, c 92, §8; am L 1987, c 338, §10; am L 1989, c 211, §§8, 10; am L 1990, c 281, §11]

" **§832-24 Immunity from service of process in certain civil actions.** 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 arising out of the same facts as the criminal proceeding to answer which the person is being or has been returned, until the person has been convicted in the criminal proceeding, or, if acquitted, until the person has had reasonable opportunity to return to the state from which the person was extradited. [L 1941, c 99, §24; RL 1945, §10654; RL 1955, §250-24; HRS §713-24; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§832-25 Written waiver of extradition proceedings.** (a) Any person arrested in this State charged with having committed any crime in any state or alleged to have escaped from confinement, or broken the terms of the person's bail, probation, or parole may waive the issuance and service of the warrant provided for in sections 832-7 and 832-8, 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 the waiver is executed or subscribed by the person the judge shall inform the person of the person's rights to the issuance and service of warrant of extradition and to obtain a writ of habeas corpus as provided for in section 832-10.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this State and filed therein. The judge shall direct the officer

having the person in custody to deliver forthwith the 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 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.

(b) Notwithstanding subsection (a), a law enforcement agency holding a person who is alleged to have broken the terms of the person's probation, parole, bail, or any other release shall immediately deliver the person to the duly authorized agent of the demanding state without the requirement of a governor's warrant if all of the following apply:

- (1) The person has signed a prior waiver of extradition as a term of the person's current probation, parole, bail, or other release in the demanding state; and
- (2) The law enforcement agency holding the person has received both of the following:
 - (A) An authenticated copy of the prior waiver of extradition signed by the person; and
 - (B) A photograph and fingerprints properly identifying the person as the person who signed the waiver. [L 1941, c 99, §25; RL 1945, §10655; RL 1955, §250-25; HRS §713-25; ren L 1972, c 9, pt of §1; gen ch 1985; am L 1992, c 44, §1; gen ch 1992]

" **§832-26 Nonwaiver by this State.** Nothing in this chapter shall be deemed to constitute a waiver by this State of its right, power, or privilege to try the demanded person for crime committed within this State, or of its right, power, or privilege to regain custody of the 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 chapter 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. [L 1941, c 99, §26; RL 1945, §10656; RL 1955, §250-26; HRS §713-26; ren L 1972, c 9, pt of §1]

" **§832-27 No right of asylum; no immunity from other criminal prosecutions while in this State.** 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 other crimes which the person may be charged with having

committed here as well as that specified in the requisition for the person's extradition. [L 1941, c 99, §27; RL 1945, §10657; RL 1955, §250-27; HRS §713-27; ren L 1972, c 9, pt of §1; gen ch 1985]