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RELIEF FROM EXTRADITION UNDER THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

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The Uniform Reciprocal Enforcement of Support Act (as amended) hereinafter designated by URESA (or a substantially similar statute[1]) has been passed in 47 states,[2] the Commonwealth of Puerto Rico and three territories.[3] Its proper interpretation is therefore important to the smooth and uniform operation of the vast machinery now in use to make it effective.[4]

One of the most difficult problems has to do with the interpretation of the provisions relating to extradition. These are Sections 5 and 6 which follow:

PART II—CRIMINAL ENFORCEMENT

Section 5. Interstate Rendition. The Governor of this state (1) may demand from the Governor of any other state the sur-

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1. Legislation that is sufficiently similar to permit reciprocity has been enacted in Connecticut, Delaware, Florida, Georgia, Idaho, Iowa, Kentucky, New York, South Carolina and the Virgin Islands.

2. The only exception is Nevada.

3. The three territories are Alaska, Hawaii, and the Virgin Islands.

4. Before any of the recent legislation went into effect it was estimated by the Director of the National Desertion Bureau that United States taxpayers were paying about 205 million dollars a year for support of the families that should have been supported by deserting bread winners. There are no recent estimates of what part of this has been recaptured by the enforcement of duties of support under reciprocal legislation. However, figures for New York City indicate that much has been accomplished. In 1951 collections in New York City courts on account of reciprocal support cases amounted to $83,836; in 1953 this figure increased to approximately $475,000. Zimmerman, *Out of State Enforcement of Maintenance Obligations in the United States.* INTERPRETER RELEASES, Vol. 31, p. 114 (an information service published by the Common Council for American Unity, 20 West 40th Street, New York 18, New York).

render of any person found in such other state who is charged in in this state with the crime of failing to provide for the support of any person in this state and (2) may surrender on demand by the Governor of any other state any person found in this state who is charged in such other state with the crime of failing to provide for the support of a person in such other state. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other state.

Section 6. Relief from the above Provisions. Any obligor contemplated by Section 5, who submits to the jurisdiction of the court of such other state and complies with the court's order of support, shall be relieved of extradition for desertion or nonsupport entered in the courts of this state during the period of such compliance.[5]

The first sentence of Section 5 is nothing more than a statement of the powers of state governors existing by virtue of Article IV, Section 2, paragraph 2 of the United States Constitution[6] and congressional implementing legislation.[7] It is the two concluding sentences of Section 5 that are of special significance. These free the extradition procedure from the necessity of stating or showing that the person whose surrender is demanded was in the demanding state at the time of the commission of the

5. Discussion in this paper is based on the uniform text as recommended by the National Conference of Commissioners on Uniform State Laws. Some states, such as Connecticut and Florida, have omitted these sections. Some uncertainty has arisen as to whether URESA is a criminal or a civil statute. The uniform text is divided into three parts entitled respectively: Part I. General Provisions, Part II. Criminal Enforcement, Part III. Civil Enforcement. The uncertainty is due to the fact that the legislatures of the enacting states have frequently omitted the titles of the three parts above indicated. URESA is both a criminal and a civil statute, and any particular action taken under it may be either criminal or civil depending on the part of the statute coming into play.

6. The Constitutional text is as follows: "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 demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

7. Congressional legislation may be found in 18 U.S.C.A. §§ 3182-3195 (1951).

crime or had fled therefrom.[8] They are especially desirable in all cases of desertion and non support. Without them it would be necessary to show that the defendant, *before leaving the demanding state,* had deserted and had already formulated an intention not to support his family. In most cases this is either not true or is impossible to prove. It is rare that a man's intentions are clear. Frequently he may leave the state with little or no intention other than to seek work, and only after the emotional ties to his family have been loosened does he determine to desert and not to support them. Thus these provisions become almost indispensable in the support cases. Since they permit state governors to demand and surrender persons outside the class of criminals covered by Article IV, Section 2, paragraph 2 of the United States Constitution, there can be no constitutional objection.

The effect and scope of Section 6 has been the object of much discussion. The important question is, to what obligor does it apply and what exactly will relieve him of extradition?

To what obligor does it apply? It may be well to analyze the text

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8. These provisions were inspired by the more general text of Section 6 of the Uniform Criminal Extradition Act which has been adopted in forty states. The latter act has been held constitutional in *Ex parte* Morgan, 78 F. Supp. 756 (S.D.Cal. 1948); State *ex rel.* Gildar v. Kriss, 191 Md. 568, 62 A. 2d 568 (1948); People *ex rel.* Faulds v. Herberich, 93 N.Y.S. 2d 272 (2d Dep't 1948), *aff'd* 301 N.Y. 614, 93 N. E. 2d 913 (1949); Culbertson v. Sweeney, 70 Ohio App. 344, 44 N.E. 2d 807 (1942), *appeal dismissed,* 140 Ohio St. 426, 45 N.E. 2d 118 (1942); English v. Matowitz, 148 Ohio St. 39, 72 N.E. 2d 898 (1947); *In re* Acton, 90 Ohio App. 100, 103 N.E. 2d 577 (1949); *Ex parte* Dalton, 56 N.M. 407, 244 P. 2d 790 (1952); *Ex parte* Bledsoe, 93 Okla. Crim. App. 302, 227 P. 2d 680 (1951); *Ex parte* Coleman, 245 S.W. 2d 712 (Tex. Cr. 1952). See Note, Constitutionality, construction and application of statute authorizing extradition of the one who commits an act within the state or a third state resulting in a crime in the demanding state, 151 A.L.R. 239 (1944). In *Ex parte* Morgan, 86 C.A. 2d 217, 194 P. 2d 800 (1948) the court said: "The Federal Statute (18 U.S.C.A. § 3182 carrying into execution the constitutional provision of Art. IV, Section 2) does not purport to cover the entire field of extradition. It mentions only one class of persons—those who flee from the state. . . . The Uniform Criminal Extradition Act does not provide for the extradition of persons of that class but covers persons of an entirely different category—those who commit an act in one state intentionally resulting in a crime in another state. Since each statute refers to a subject different and distinct from the other, there is no conflict and each is enforceable in its own sphere." Certiorari was denied by the Supreme Court, 338 U.S. 827 (1949). The constitutionality of URESA has been upheld in Duncan v. Smith, 262 S.W. 2d 373 (Ky. 1953) and State *ex rel.* Bryant v. Fleming, 260 S.W. 2d 161 (Tenn. 1953). In Commonwealth v. Shaffer, 103 A. 2d 430 (Pa. Super. Ct. 1954) the defendant contended that the act was unconstitutional. The court did not consider the contention worthy of comment. See Brockelbank, *Is the Uniform Reciprocal Enforcement of Support Act Constitutional?* 17 Mo. L. REV. 1, 8 (1952) and 31 ORE. L. REV. 97, 104 (1952). See also Note, *Constitutional Aspects of State Extradition Legislation,* 28 IND. L. REV. 662 (1953).

rather literally to see what it says. Section 6 says "*any obligor contemplated by Section 5* . . . shall be relieved of extradition . . ." etc. There are two classes of obligors mentioned in Section 5: (1) Those whom the governor of this state may be demanding from another state and (2) those whom the governor of another state may be demanding of this state. Pursuing this tack to the limit this means, as to the first class (those whom the governor of this state may be demanding from the governor of another state) that the governor of this state as a demanding state shall relieve from extradition, that is shall not extradite, an obligor who submits to the jurisdiction of the "other state," which can only be in this context the asylum state, and complies with an order of support of a court of that state. This means as to the second class (those whom the governor of another state may be demanding of this state) that the governor of this state as a state on whom a demand is being made shall relieve from extradition, that is shall not surrender, an obligor who submits to the jurisdiction of the "other state", this time the demanding state, and complies with its order of support. More simply stated this means that the demanding state shall not extradite obligors who comply with support orders of asylum states and conversely asylum states shall not surrender obligors who comply with support orders of demanding states.

Does this double barrelled directive make sense and did the National Conference of Commissioners on Uniform State Laws really mean that when they approved Section 6?

Let us see how these two rules which we have torn from the words of Section 6 may operate in the crucible of application.

(1) *The demanding state shall not extradite obligors who comply with support orders of the asylum state.* The procedure by which a governor is pursuaded to demand a criminal defendant from another state is informal. But until he takes action in the form of making the demand the rights of the defendant have been in no way affected and there is no occasion, as there is no right, for him to bring legal proceedings of any kind in the demanding state. The legal sufficiency of the demand and the regularity of the requisition papers are always tested in habeas corpus proceedings in the asylum state, and in the absence of special statutory provisions this is the only method by which it can be done.[9]

9. *In re* Heck, 122 W. Va. 175, 7 S.E. 2d 866 (1940). Apparently special statutory provisions providing for proceedings somewhat analogous to habeas corpus before a special court or judge exist in Ohio. OHIO CODE § 114 (Throckmorton's, 1936).

While the hand of the governor can be neither compelled nor stayed a conscientious governor seeks only to do his duty under the law. His duty is clear. He must not demand those who are complying with support orders from other states.

Those whom the governor of the demanding state has no right to demand, the governor of the asylum state has a duty to refuse to surrender. So we must attempt to answer the general question, with what support orders must the obligor comply to be relieved of extradition?

From the point of view of the governor of the demanding state compliance must be with a support order regularly made by a court of the asylum state. For ought that appears in URESA this support order may have issued from either a criminal or a civil court or may be the result of quasi-criminal proceedings where although the form of the action is criminal the judgment commands the defendant to furnish support. Of course compliance with a support order of a court without jurisdiction would not offer relief from extradition.

May the obligor, whose surrender is demanded, submit to the jurisdiction of the court of the asylum state on his own initiative and ask that the court make a support order with which he can comply in order to be relieved of extradition? The answer must certainly be no. Some have thought the defendant should be given this right,[10] but there are overwhelming reasons why the text of Section 6 should not be given this construction.

First, there is no such procedure in existence. A defendant does not initiate proceedings. That is the role of the plaintiff. No court in the asylum state has on its docket any action against him. If he is to submit, it must be to attack or defend. He surely has no reason to attack. In order to defend he must await a complaint against him.

Secondly there are important reasons why a new procedure of this kind should not be created for his benefit. To be relieved of extradition he must not only submit to the court's jurisdiction but also comply with the court's order of support. But how could the asylum court properly make an order of support? It has only one party before it, and an old

10. *In re* Floyd, 124 A.C.A. 413, 268 P. 2d 508 (April 1, 1954). *Contra:* opinion of the Attorney General of California, No. 53/157, Jan. 14, 1954; Opinion of the Attorney General of Ohio, No. 3009, August 31, 1953.

saying has it that the absent are always in the wrong. The court could only hear the defendant's evidence, for the plaintiff in no sense is before the court. Any attempt to make an order of support under such circumstances would end, in most cases, in small and entirely insufficient token payments, and thus for a song, the defendant would be able to purchase immunity. This result varies little from the immunity which he enjoyed before the act was passed and would violate and frustrate the purpose of the act.

On the other hand the governor of the demanding state should not demand extradition of a defendant who is complying with a support order that *is* regularly made by a court of the asylum state. This will include a support order that is the result of proceedings regularly begun under URESA by a complaint filed by the plaintiff in the initiating state. Of course Section 6 may include other support orders, such as one when the plaintiff, instead of using URESA, goes to the responding state, sues the defendant and obtains a support order. But it is probable that a support order regularly obtained by the use of URESA was the one most present in the minds of the Commissioners when they approved the text of Section 6.

Now let us have a look at the picture from the point of view of the asylum state. First, the governor of the asylum state has a duty to refuse to surrender those whom the governor of the demanding state has no right to demand. Who are they? As we have just pointed they are those who are complying with a support order of the asylum state—but the support order in question must be one regularly brought in a court of the asylum state and not one that such a court makes on the ex parte submission of the defendant on his own initiative. Secondly, he must give the defendant the benefit of the second part of directive of Section 6. This has been stated above as follows:

(2) *The asylum state shall not surrender obligors who comply with support orders of the demanding state.* How can an obligor comply with the support order of the demanding state?

Of course it is unlikely that a demanding state is going to ask for the surrender of such an obligor. However it could happen that the obligor is now complying with a support order which a court of the demanding state previously issued and this fact has been overlooked by

the officials of the demanding state. If this is true his compliance should relieve him of extradition.

What if the support order with which the defendant is complying is old and because of changed conditions, such as the increased earning capacity of the defendant coupled with the decreased purchasing power of the dollar, calls for insufficient support? Support orders, like other orders of courts, are valid until properly changed by a court having jurisdiction of the defendant. Until that has been done it is difficult to see how the demanding state can indict him for a crime. But let us suppose that for some mistaken reason he is indicted in the demanding state. Apart from Section 6 the governor would be under a duty to surrender him.[11] But the purpose of Section 6 is to relieve him of extradition, and I see nothing unusual or abhorrent about such relief. There are still two weapons lying unused in the armory of the demanding state. The indictment of the demanding state might be narrowed to the crime of failure to supply support money in addition to or beyond the amount called for by the old support order if, under the laws of the demanding state, such a crime exists, or the demanding state may itself begin civil proceedings under Section 8 of URESA which provides:

> "Whenever a state or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditure so made and of obtaining continuing support."

The use of either of these weapons should be sufficient.

There is another possible way in which a defendant in the asylum state can be complying with a support order of the demanding state. Again this is unlikely but could happen. If the defendant has returned to the demanding state, has submitted to the jurisdiction of its criminal court, has been tried and, as a punishment, has been ordered to supply a certain amount of support, has returned to the asylum state and is presently complying with the order of the court of the demanding state he

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11. Note, *Habeas Corpus to test the Sufficiency of Indictment or Information as regards the offense sought to be charged,* 57 A.L.R. 85 (1928); *Determination in extradition proceedings whether crime is charged,* 81 A.L.R. 552 (1932); Horowitz and Steinberg, *The Fourteenth Amendment—Its Newly Recognized Impact on the "Scope" of Habeas Corpus in Extradition,* 23 So. CAL. L. REV. 441 (1950); Note, *Extradition—Sufficiency of Warrant Issued by the Asylum State—Construction of Uniform Criminal Extradition Act,* 2 ALA. L. REV. 346 (1950).

should be relieved from extradition. This combination of circumstances may occur due to the male volence or ill will of his spouse in the demanding state compounded by the complicity of its officials.

When it happens Section 6 should protect him.

To summarize the position here taken:

(1) Governors of demanding states should not extradite obligors who comply with support orders of asylum states when such support orders are the result of regular proceedings under URESA or other statutes in the courts of the asylum state. No relief from extradition should be given if the defendant merely on his own initiative submits to a court in the asylum state and obtains an ex parte order to support the obligee.

(2) Conversely governors of asylum states should not surrender obligors if they are being improperly demanded under (1) above or if they are somehow complying with a valid support order of the demanding state.

When the Commissioners approved URESA, they may have underestimated the importance of its criminal provisions. There was talk of the uselessness of returning an unwilling husband to his family only to stop his wages and brand him as a criminal. Experience under URESA has shown that the criminal provisions can be most effectively used in the case of the unstable runaway.[12] If the breadwinner is not well established in the state where he is found, any intimation that proceedings may be taken against him will cause him to move on to another state. There are two ways in which his intention to escape may be foiled. Under the civil proceeedings (Section 15) jurisdiction of the defendant may be obtained by his arrest. Sometimes this is not permissible under the law of the responding state. But where it is, it should be used more extensively than it is used at present. Those dealing with the act are too often unaware of this possibility and too often hesitate to use it. Then arrest with a view to extradition is the other method that may be used to prevent his escape. When the defendant has been arrested he then knows for a fact that his wandering days are over and that he must get down to the serious business of supporting his family. This is the moment that

12. This view is the main point of a paper entitled "Some Procedural Problems and Suggestions under URESA" circulated by the Attorney General of Michigan.

practice has shown so often to be fruitful in results. The defendant, many times, will pay at once and will agree to pay in the future, with proper bond or security, a reasonable amount for the support of his family. This is all the act ever meant to achieve. The fact that it is done by use of the criminal proceedings more often than was contemplated by the Commissioners is not important.

It is at this point that the provisions of Section 6 on relief from extradition come into play. If he complies with an existing support order of the asylum state he puts himself at once in the category of those whose surrender should no longer be demanded and so he is relieved of extradition. If he complies with an existing support order of the demanding state he is a direct beneficiary of Section 6 and the governor of the asylum state "shall" relieve him of extradition. Outside these possibilities there is only the informal bargain.

The governor of the asylum state must do his duty to the governor of the demanding state. Conceivably the latter's demand for the body of the defendant might be placated by a money payment and the well secured promise of future payments. If they are not forthcoming the defendant must be surrendered. What blood may be extracted from the demanded stone after delivery is not a problem of the governor of the asylum state.

In view of this discussion, should Section 6 be amended? First it is not certain that an amendment would successfully clear the hurdles of all the legislatures that have passed the act. It would be still more uncertain if the news were to get around that the amended section meant only what the old section, properly interpreted, meant anyway. Legislatures do not like to be asked to do such useless things. Finally were the amendment passed some would say that it must have been for some purpose, and so could not mean what the old section meant. Then a three ring mental circus is started. What did the old section mean? What was wrong with it? How is it changed by the amendment? We can avoid a pack of trouble by leaving well enough alone.

Were the question an original one and were all the wisdom of hindsight present to preside at the draftsman's conference, Section 6 might have been as follows:

> The Governor of this state shall not demand from any other state the surrender of an obligor who is complying with the

order of support of a court of such other state and the Governor of this state shall not surrender an obligor who is complying with the order of support of a court of the demanding state.

But that is what the present text of Section 6 means now. So what are we worrying about?