CHAPTER 976

UNIFORM ACTS IN CRIMINAL PROCEEDINGS

Cross−reference: See definitions in s. 967.02.

976.01 Uniform act for the extradition of prisoners as witnesses.

(1) DEFINITIONS. As used in this section:

(a) "Witness" means a person who is confined in a penal institution in any state and whose testimony is desired in another state in any criminal proceeding or investigation by a grand jury or in any criminal action before a court.

(b) "Penal institutions" includes a jail, prison, penitentiary, house of correction or other place of penal detention.

(2) SUMMONING WITNESS IN THIS STATE TO TESTIFY IN ANOTHER STATE. A judge of a state court of record in another state, which by its laws has made provision for commanding persons confined in penal institutions within that state to attend and testify in this state, may certify that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court, that a person who is confined in a penal institution in this state may be a material witness in the proceeding, investigation or action, and that the person's presence will be required during a specified time. Upon presentation of the certificate to any judge having jurisdiction over the person confined, and upon notice to the attorney general, the judge in this state shall fix a time and place for a hearing and shall make an order directed to the person having custody of the prisoner requiring that the prisoner be produced before the judge at the hearing.

(3) COURT ORDER. If at the hearing the judge determines all of the following, the judge shall issue an order, with a copy of the certificate attached, directing the witness to attend and testify, directing the person having custody of the witness to produce the witness, in the court where the criminal action is pending, or where the grand jury investigation is pending, at a time and place specified in the order, and prescribing such conditions as the judge determines:

(a) That the witness may be material and necessary.

(b) That the witness's attending and testifying are not adverse to the interests of this state or to the health or legal rights of the witness.

(c) That the laws of the state in which the witness is requested to testify will give the witness protection from arrest and the service of civil and criminal process because of any act committed prior to the witness's arrival in the state under the order.

(d) That as a practical matter the possibility is negligible that the witness may be subject to arrest or to the service of civil or criminal process in any state through which the witness will be required to pass.

(4) TERMS AND CONDITIONS. The order to the witness and to the person having custody of the witness shall provide for the return of the witness at the conclusion of the witness's testimony, proper safeguards on the witness's custody, and proper financial reimbursement or prepayment by the requesting jurisdiction for all expenses incurred in the production and return of the witness and may prescribe such other conditions as the judge thinks proper or necessary. The order shall not become effective until the judge of the state requesting the witness enters an order directing compliance with the conditions prescribed.

(5) EXCEPTIONS. This section does not apply to any person in this state confined as insane or mentally ill or as a defective delinquent.

(6) PRISONER FROM ANOTHER STATE SUMMONED TO TESTIFY IN THIS STATE. If a person confined in a penal institution in any other state may be a material witness in a criminal action pending in a court of record or in a grand jury investigation in this state, a judge of the court may certify that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court, that a person who is confined in a penal institution in the other state may be a material witness in the proceeding, investigation or action, and that the person's presence will be required during a specified time. The certificate shall be presented to a judge of a court of record in the other state having jurisdiction over the prisoner confined, and a notice shall be given to the attorney general of the state in which the prisoner is confined.

(7) COMPLIANCE. The judge of the court in this state may enter an order directing compliance with the terms and conditions prescribed by the judge of the state in which the witness is confined.

(8) EXEMPTION FROM ARREST AND SERVICE OF PROCESS. If a witness from another state comes into or passes through this state under an order directing the witness to attend and testify in this or another state, the witness shall not while in this state pursuant to the order be subject to arrest or the service of process, civil or criminal, because of any act committed prior to the witness's arrival in this state under the order.

(9) UNIFORMITY OF INTERPRETATION. This section shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: 1979 c. 89; 1993 a. 486.

976.02 Uniform act for the extradition of witnesses in criminal actions.

(1) DEFINITIONS. "Witness" as used in this section includes a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding. "State" includes any territory of the United States and the District of Columbia. "Summons" includes a subpoena order or other notice requiring the appearance of a witness.

(2) SUMMONING WITNESS IN THIS STATE TO TESTIFY IN ANOTHER STATE. (a) If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within the state is a material witness in such prosecution or grand jury investigation, and that the person's presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

(b) If at the hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of

the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, and of any other state through which the witness may be required to pass by ordinary course of travel, will give to the witness protection from arrest and the service of civil and criminal process, the judge shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence, at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(c) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure the witness's attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before the judge for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

(d) If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of 10 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and $5 for each day that the witness is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, the witness shall be punished as provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

(3) WITNESS FROM ANOTHER STATE SUMMONED TO TESTIFY IN THIS STATE. (a) If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure the witness's attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(b) If the witness is summoned to attend and testify in this state the witness shall be tendered the sum of 10 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and $5 for each day that the witness is required to travel and attend as a witness. A witness who has appeared in accordance with the summons shall not be required to remain within this state a longer period of time than otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, the witness shall be punished as provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

(4) EXEMPTION FROM ARREST AND SERVICE OF PROCESS. (a) If a person comes into this state in obedience to a summons directing the person to attend and testify in this state the person shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before the person's entrance into this state under the summons.

(b) If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, the person shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before the person's entrance to this state under the summons.

(5) UNIFORMITY OF INTERPRETATION. This section shall be so interpreted as to make uniform the law of the states which enact it.

History: 1975 c. 422; 1993 a. 486.

Parole detainer order is an arrest within meaning of (4). State ex rel. Forte v. Ferris, 79 Wis. 2d 501, 255 N.W.2d 594.

The state's failure to use the Uniform Extradition Act to compel the presence of a doctor whose hearsay testimony was introduced denied the accused the right to confront the witness and violated the hearsay rule, but the error was harmless. State v. Zellmer, 100 Wis. 2d 136, 301 N.W.2d 209 (1981).

976.03 Uniform criminal extradition act. (1) DEFINITIONS. In this section, "governor" includes any person performing the functions of governor by authority of the law of this state. "Executive authority" includes the governor, and any person performing the functions of governor in a state other than this state, and "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) CRIMINALS TO BE DELIVERED UPON REQUISITION. Subject to the qualifications of this section, and the provisions of the U.S. constitution 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, felony or other crime, who has fled from justice and is found in this state.

(3) FORM OF DEMAND. No demand for the extradition of a person charged with a crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under sub. (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 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; 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, extended supervision 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.

(4) GOVERNOR MAY INVESTIGATE CASE. 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 a 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 the governor the situation and circumstances of the person so demanded, and whether the person ought to be surrendered.

(5) EXTRADITION OF PERSONS IMPRISONED OR AWAITING TRIAL IN ANOTHER STATE OR WHO HAVE LEFT THE DEMANDING STATE UNDER COMPULSION. (a) 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 the person 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 the person's 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.

(b) 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 sub. (23) with having

violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

(6) EXTRADITION OF PERSONS CHARGED WITH HAVING COMMITTED A CRIME IN THE DEMANDING STATE BY ACTS DONE IN THIS OR SOME OTHER STATE. 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 as provided in sub. (3) 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.

(7) ISSUE OF GOVERNOR'S WARRANT OF ARREST; ITS RECITALS. If the governor shall decide that the demand should be complied with, the governor 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 the governor may think fit to entrust with the execution thereof; and the warrant must substantially recite the facts necessary to the validity of its issue.

(8) MANNER AND PLACE OF EXECUTION. The warrant shall authorize the officer or other person to whom directed to arrest the accused at any place where the accused may be found within the state and to command the aid of all sheriffs and other peace officers in the execution of the warrant, and to deliver the accused subject to this section, to the duly authorized agent of the demanding state.

(9) AUTHORITY OF ARRESTING OFFICER. 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.

(10) RIGHTS OF ACCUSED; APPLICATION FOR HABEAS CORPUS. No person arrested upon such warrant may be delivered over to the agent whom the executive authority demanding the person shall have appointed to receive the person unless the person shall first be taken forthwith before a judge of a court of record in this state, who shall inform the person of the demand made for the person's surrender and of the crime with which the person is charged, and that the person has the right to demand and procure legal counsel; and if the prisoner or the prisoner's counsel shall state that the prisoner desires to test the legality of the prisoner's arrest, the judge of such court of record shall fix a reasonable time to be allowed the prisoner within which to commence an action for habeas corpus. When such action is commenced, 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 said agent of the demanding state.

(11) PENALTY FOR NONCOMPLIANCE WITH PRECEDING SECTION. 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 disobedience to sub. (10) shall be guilty of a misdemeanor, and on conviction shall be fined not more than $1,000, or be imprisoned not more than 6 months or both.

(12) CONFINEMENT IN JAIL WHEN NECESSARY. (a) 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 or she may pass; and the keeper of such jail must receive and safely keep the prisoner until the person having charge of the prisoner is ready to proceed on his or her route, such person being chargeable with the expense of keeping.

(b) 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 such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he or she may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of the prisoner is ready to proceed on his or her route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that the officer or agent is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

(13) ARREST PRIOR TO REQUISITION. 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 any crime in any other state and, except in cases arising under sub. (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 or her bail, probation, extended supervision or parole, 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 crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under sub. (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 or her bail, probation, extended supervision or parole, and is believed to be in this state, the judge shall issue a warrant directed to any peace officer commanding the officer to apprehend the person named therein, wherever the person may be found in this state, and to bring the person 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.

(14) ARREST WITHOUT A WARRANT. 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 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 sub. (13); and thereafter the accused's answer shall be heard as if the accused had been arrested on a warrant.

(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 sub. (6), that the person held has fled from justice, the judge must, by a warrant reciting the accusation, commit the person held to the county jail for such a time not exceeding 30 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 sub. (16), or until the accused shall be legally discharged.

(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 prisoner's appearance before the judge at a time specified in such bond, and for the prisoner's surrender, to be arrested upon the warrant of the governor of this state.

(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 60 days, or may again take bail for the accused's appearance and surrender, as provided in sub. (16), but within a period not to exceed 60 days after the date of such new bond.

(18) FORFEITURE OF BAIL. If the prisoner is admitted to bail, and fails to appear and surrender himself or herself according to the conditions of his or her 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 such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

(19) IF A PROSECUTION HAS ALREADY BEEN INSTITUTED IN THIS STATE. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor at the governor's discretion either may surrender the person on the demand of the executive authority of another state, or may hold the person until the person has been tried and discharged, or convicted and punished in this state.

(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 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.

(21) GOVERNOR MAY RECALL WARRANT OR ISSUE ALIAS. The governor may recall his or her warrant of arrest, or may issue another warrant whenever he or she deems proper.

(22) FUGITIVES FROM THIS STATE, DUTY OF GOVERNOR. Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his or her bail, probation, extended supervision or parole in this state from the executive authority of any other state, or from the chief justice or an associate justice of the district court of the United States for the District of Columbia authorized to receive such demand under the laws of the United States, the governor shall issue a warrant under the 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.

(23) MANNER OF APPLYING FOR REQUISITION. (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 or her 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 the person, and the approximate time, place and circumstances of its commission, the state in which the person 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 or her bail, probation, extended supervision or parole, the prosecuting attorney of the county in which the offense was committed, the secretary of corrections, or the warden of the institution 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 the person, in which application shall be stated the name of the person, the crime of which the person was convicted, the circumstances of escape from confinement or of the breach of the terms of bail, probation, extended supervision or parole, and the state in which the person 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 2 certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to a judge, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole commission, warden or sheriff may also attach such further affidavits and other documents in duplicate as he, she or it deems 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 governor to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

(24) EXPENSES OF EXTRADITION. The compensation of the agent of the demanding state shall be $8 per day for the time necessarily devoted to the performance of the agent's duties, and the agent's actual and necessary expenses, which compensation and expenses shall be allowed by the county board of the county in which the crime was committed, upon presentation to said board of a verified account, stating the number of days the agent was engaged and the items of expense incurred while acting as such agent.

(25) ASSISTANTS TO AGENT RETURNING FUGITIVE. If the district attorney certifies in writing that it is necessary or desirable, one or more peace officers may accompany said agent and shall be entitled to compensation at the rate of $5 per day, unless the county board by resolution establishes a different rate, and to their actual and necessary expenses. Such compensation and expenses shall be claimed and allowed as provided in sub. (24) and the said certificate of the district attorney shall be attached to the verified account of such officer for such services. While so engaged, said officer shall be deemed an officer of this state and shall use all proper means to assist the agent to retain the custody of the prisoner.

(26) EXEMPTION FROM CIVIL PROCESS. 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.

(27) WRITTEN WAIVER OF EXTRADITION PROCEEDINGS. (a) Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his or her bail, probation, extended supervision or parole may waive the issuance and service of the warrant provided for in subs. (7) and (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; however, before such waiver shall be executed or subscribed by such person the judge shall inform such person of the person's rights to the issuance and service of a warrant of extradition and to commence an action for habeas corpus as provided in sub. (10).

(b) 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 such person in custody to deliver forthwith such 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. Nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without for-

mality 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.

(28) NONWAIVER BY THIS STATE. Nothing in this section shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or 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.

(29) NO RIGHT OF ASYLUM. 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.

(30) INTERPRETATION. This section shall be so interpreted as to make uniform the law of those states which enact it.

History: 1971 c. 40 s. 93; 1971 c. 298 s. 26 (2) to (4); 1981 c. 289; 1989 a. 31; 1993 a. 486; 1995 a. 225; 1997 a. 283; 2009 a. 28; 2011 a. 38.

Judicial Council Note, 1981: References in subs. (10) and (27) (a) to a "writ" of habeas corpus have been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto. [Bill 613–A]

Alibi or questions of guilt or innocence are beyond the scope of inquiry in a habeas corpus proceeding. Extradition is allowed even though the accused did no act in the foreign state and has not fled from that state. State ex rel. Welch v. Hegge, 54 Wis. 2d 482, 195 N.W.2d 669 (1972).

An extradition proceeding is not subject to collateral attack in a probation revocation hearing. State ex rel. Hanson v. DHSS, 64 Wis. 2d 367, 219 N.W.2d 267 (1974).

A request by the demanding state for extradition from Wisconsin of a fugitive accused of violation of the terms of probation need not be accompanied by an affidavit sworn before a magistrate, but is sufficient under sub. (3), if included therewith are copies of the judgment of conviction, or sentence imposed, together with a statement by the executive authority that the fugitive has broken the terms of the probation. State ex rel. Holmes v. Spice, 68 Wis. 2d 263, 229 N.W.2d 97 (1976).

As indicated by the presence of a restriction in other uniform acts adopted by Wisconsin conditioning their application to other states with the same or similar acts and the absence of such a limitation in the Uniform Criminal Extradition Act, applicability of the statute is not affected in Wisconsin by the fact that a state demanding extradition has not adopted the act. State v. Hughes, 68 Wis. 2d 662, 229 N.W.2d 655 (1975).

Only the asylum state, and not the defendant, has a constitutional right to extradition. State ex rel. Niederer v. Cady, 72 Wis. 2d 311, 240 N.W.2d 626 (1976).

Sub. (14) was not intended to repudiate the common law rule that an arrest may be made on probable cause to believe that the subject had committed a crime in another state, irrespective of a lack of a complaint or warrant in that state. Desjarlais v. State, 73 Wis. 2d 480, 243 N.W.2d 453 (1976).

The scope of inquiry in extradition habeas corpus cases is discussed. State v. Ritter, 74 Wis. 2d 227, 246 N.W.2d 552 (1976).

There is no right to a hearing before the governor in extradition proceedings under this section. The mode or manner of a person's departure from the state does not affect the status of a fugitive from justice. State ex rel. Jackson v. Froelich, 77 Wis. 2d 299, 253 N.W.2d 69 (1977).

An appropriate issue for the habeas corpus court under sub. (10) is not whether a warrant was properly issued in the demanding state, but whether, given properly authenticated documents, probable cause is stated that justifies the issuance of a governor's warrant in the asylum state. State ex rel. Sieloff v. Golz, 80 Wis. 2d 225, 258 N.W.2d 700 (1977).

A convict paroled from federal prison in the state was a "fugitive from justice" subject to extradition by the demanding state. State ex rel. O'Connor v. Williams, 95 Wis. 2d 378, 290 N.W.2d 533 (Ct. App. 1980).

Although the sending state could retake a compact parolee under s. 57.13 [now s. 304.13] without process, if it chooses to extradite the parolee it must meet extradition requirements. State ex rel. Reddin v. Meekma, 99 Wis. 2d 56, 298 N.W.2d 192 (Ct. App. 1980).

Affirmed. 102 Wis. 2d 358, 306 N.W.2d 664 (1981).

No waiver of jurisdiction will be found unless waiver was manifestly intended by the demanding state at the time it yielded to another sovereignty. State ex rel. Graves v. Williams, 99 Wis. 2d 65, 298 N.W.2d 392 (Ct. App. 1980).

If the demanding state has not a made judicial determination of probable cause or if documents do not show prima facie validity, the *Sieloff* analysis appears to be appropriate and not in conflict with controlling federal law in *Michigan v. Doran*. State v. Stone, 111 Wis. 2d 470, 331 N.W.2d 83 (1983).

The court erred in refusing to allow the defendant to introduce evidence that he was not a fugitive from justice. State ex rel. Rodencal v. Fitzgerald, 164 Wis. 2d 411, 474 N.W.2d 795 (Ct. App. 1991).

A demanding state's extradition documents are in order when they include a warrant issued by a magistrate from the demanding state who is statutorily required to make a finding of probable cause. State ex rel. Ehlers v. Endicott, 187 Wis. 2d 57, 523 N.W.2d 189 (Ct. App. 1994).

The 30 and 60–day periods for detention under subs. (15) and (17) do not apply to persons already in detention. State ex rel. Ehlers v. Endicott, 188 Wis. 2d 57, 523 N.W.2d 189 (Ct. App. 1994).

A waiver of extradition and this section expressly gave Wisconsin the right to the petitioner's custody to serve a Wisconsin sentence imposed while the prisoner was serving a sentence in Nevada. At the completion of the Wisconsin sentence, the scope and purpose of the waiver and this section were satisfied and completed. Nothing in the waiver or this section governed or guaranteed future events. Specifically, the petitioner had no right or legitimate expectation that he would be returned to Nevada upon the completion of his Wisconsin sentence or of immunization from potential commitment proceedings under ch. 980. Pharm v. Bartow, 2005 WI App 215, 287 Wis. 2d 663, 706 N.W.2d 693, 04–0583.

Affirmed. 2007 WI 13, 298 Wis. 2d 702, 727 N.W. 2d 1, 04–0583.

When a Wisconsin prisoner is transported out of state for emergency medical care, acting under s. 976.03 is required. 80 Atty. Gen. 41.

Once the governor of an asylum state has acted on an extradition request based on a demanding state's judicial determination that probable cause existed, no further inquiry may be had on that issue in the asylum state. Michigan v. Doran, 439 U.S. 282 (1978).

Under the federal extradition act, federal courts have the power to compel a state governor to extradite a fugitive. Puerto Rico v. Branstad, 483 U.S. 219 (1987).

976.04 Uniform act on close pursuit. (1) Any member of a duly organized state, county or municipal peace unit of another state of the United States who enters this state in close pursuit, and continues within this state such close pursuit, of a person in order to arrest the person on the grounds that the person is believed to have committed a felony in such other state, shall have the same authority to arrest and hold in custody such person, as members of a duly organized state, county or municipal peace unit of this state have, to arrest and hold in custody a person on the grounds that the person has committed a felony in this state.

(2) If an arrest is made in this state by an officer of another state in accordance with sub. (1), the officer shall without unnecessary delay take the person arrested before a judge of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the judge determines that the arrest was lawful the judge shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state or admit the person to bail for such purpose. If the judge determines that the arrest was unlawful, the judge shall discharge the person arrested.

(3) Subsection (1) shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

(4) For the purpose of this section, "state" includes the District of Columbia.

(5) "Close pursuit" as used in this section includes fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It also includes the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there are reasonable grounds for believing that a felony has been committed. Close pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

(6) This section shall be cited as the "Uniform Act on Close Pursuit".

History: 1993 a. 486; 1995 a. 417.

976.05 Agreement on detainers. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joined therein in the form substantially as follows:

The contracting states solemnly agree that:

(1) ARTICLE I. The party states find that charges outstanding against a prisoner, detainers 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 detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, 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.

(2) ARTICLE II. As used in this agreement:

(a) "Receiving state" means the state in which trial is to be had on an indictment, information or complaint under sub. (3) or (4).

(b) "Sending state" means a state in which a prisoner is incarcerated at the time that the prisoner initiates a request for final disposition under sub. (3) or at the time that a request for custody or availability is initiated under sub. (4).

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

(3) ARTICLE III. (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, the prisoner shall be brought to trial within 180 days after the prisoner has 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 or her imprisonment and his or her request for a final disposition to be made of the indictment, information or complaint, but for good cause shown in open court, the prisoner or the prisoner's 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 or date of release to extended supervision of the prisoner and any decisions of the department relating to the prisoner.

(b) The written notice and request for final disposition referred to in par. (a) shall be given or sent by the prisoner to the department, or warden, or other official having custody of the prisoner, 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 department, or warden, or other official having custody of the prisoner shall promptly inform the prisoner of the source and contents of any detainer lodged against the prisoner and shall also inform the prisoner of the prisoner's 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 under par. (a) shall operate as a request for final disposition of all untried indictments, informations 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 department, or warden, 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 under par. (a) 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 par. (d), and a waiver of extradition to the receiving state to serve any sentence there imposed upon the prisoner after completion of the prisoner's term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of the prisoner's body in any court where the prisoner's 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 the prisoner's execution of the request for final disposition referred to in par. (a) shall void the request.

(4) ARTICLE IV. (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 the officer has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with sub. (5) (a) 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 has duly approved, recorded and transmitted the request: and that there shall be a period of 30 days after receipt by the appropriate authorities before the request is honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon the governor's own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request under par. (a), 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 or date of release to extended supervision 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 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 to any proceeding made possible by this subsection, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or the prisoner's counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this subsection shall be construed to deprive any prisoner of any right which the prisoner may have to contest the legality of the prisoner's delivery under par. (a), but such delivery may not be opposed or denied on the grounds 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 under sub. (5) (e), 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.

(5) ARTICLE V. (a) In response to a request made under sub. (3) or (4), 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 under sub. (3). 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 or her 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 refuses or fails 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 sub. (3) or (4), 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 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 or complaints which form the basis of the detainer or for prosecution on any other charge or charges arising out of the same transaction. Except for the prisoner's attendance at court and while being transported to or from any place at which the prisoner's 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 allows.

(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 received 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. This paragraph shall govern unless the states concerned 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 subdivisions, as to the payment of costs, or responsibilities therefor.

(6) ARTICLE VI. (a) In determining the duration and expiration dates of the time periods provided in subs. (3) and (4), 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.

(7) ARTICLE VII. 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.

(8) ARTICLE VIII. This agreement shall enter into full force 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.

(9) ARTICLE IX. 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 as to the remaining states and in full force as to the state affected as to all severable matters.

(10) In this section:

(a) "Appropriate court", with reference to the courts of this state, means the circuit court.

(b) "Department" means the department of corrections.

(c) "Good time" includes time credit under s. 302.11.

(11) All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other parties in enforcing the agreement and effectuating its purpose.

(12) Nothing in this section or in the agreement on detainers shall be construed to require the application of s. 939.6195 or 939.62 to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement.

(13) Any prisoner who while in another state as a result of the application of the agreement on detainers escapes from lawful custody shall be punished as though such escape had occurred within this state.

(14) The department shall give over the person of any inmate of any penal or correctional institution under its jurisdiction whenever so required by the operation of the agreement on detainers. The central administrator of and information agent for the agreement on detainers shall be the secretary of corrections.

(15) Copies of this section shall, upon its approval, be transmitted to the governor of each state, the attorney general and the secretary of state of the United States, and the council of state governments.

History: 1977 c. 449; 1979 c. 89; 1981 c. 390; 1983 a. 189, 528; 1989 a. 31; 1993 a. 486; 1997 a. 283; 2017 a. 145.

The uniform detainer act, s. 976.05 is unconstitutional in: 1) failing to require that the prisoner be notified of his rights; 2) denying him equal protection similar to that afforded prisoners under the criminal extradition act; and 3) not requiring a judicial hearing. The use of a hearing similar to that required under the extradition act would cure the defects. State ex rel. Garner v. Gray, 55 Wis. 2d 574, 201 N.W.2d 163 (1972).

The question of whether another state, which has filed a detainer, has failed to grant the prisoner a speedy trial after demand must be decided by the demanding state. The appropriate officer to file a detainer under Art. IV (a) is the prosecuting officer of the county of the foreign state where the charges exist. State ex rel. Garner v. Gray, 59 Wis. 2d 323, 208 N.W.2d 161 (1973).

Res judicata should not be applied to bar multiple detainer requests if prior requests were dismissed because of the inadequacy or insufficiency of the requesting documents. In Matter of Custody of Aiello, 166 Wis. 2d 27, 479 N.W.2d 178 (Ct. App. 1991).

A waiver of the time limits under this section may be made by conduct and does not require an express personal waiver. State v. Aukes, 192 Wis. 2d 338, 531 N.W.2d 382 (Ct. App. 1995).

If government officials complied with the procedural requirements of this section and the prisoner refused to follow those procedures, the prisoner will be held to the technical requirements of this section. State v. Blackburn, 214 Wis. 2d 372, 571 N.W.2d 695 (Ct. App. 1997), 97–0451.

The 180−day time limit in sub. (3) does not apply if the detainee has been convicted but not sentenced prior to being returned from a party state. State v. Grzelak, 215 Wis. 2d 577, 573 N.W.2d 538 (Ct. App. 1997), 97−1454.

A writ of habeas corpus prosequendum does not constitute a detainer subject to the requirements of the Interstate Agreement on Detainers, s. 976.05. State v. Eesley, 225 Wis. 2d 248, 591 N.W.2d 846 (1999), 97−1839.

The "anti−shuffling" provision under sub. (4) (e) may be waived if the prisoner requests a procedure that is inconsistent with the statute. It is not necessary to knowingly and intentionally relinquish the rights under sub. (4) (e); even if the prisoner is unaware of these rights, they may be waived by a request for contrary treatment. State v. Nonahal, 2001 WI App 39, 241 Wis. 2d 397, 626 N.W.2d 1, 00−0603.

The defendant waived his right to a speedy trial by his conduct, discharging his attorney six days before the scheduled trial and agreeing to a trial date outside of the 180−day limit. Having asked for, and accepted, treatment inconsistent with his rights under this section, the defendant cannot then assert those rights in an effort to win a dismissal of charges. State v. Miller, 2003 WI App 74, 261 Wis. 2d 866, 661 N.W.2d 466, 02−0851.

The apparent failure of Illinois prison authorities to comply with the IAD by failing to notify the defendant of Wisconsin charges does not warrant dismissal of the Wisconsin charge. State v. Townsend, 2006 WI App 177, 295 Wis. 2d 844, 722 N.W. 2d 753, 03−0429.

This section applies to detainers lodged against prisoners that are based on untried indictments, informations, or complaints. There is nothing that indicates that the rights accorded to prisoners under it attach when there are no untried charges outstanding. Status as a parolee does not keep a former prisoner within this statute. Pharm v. Bartow, 2007 WI 13, 298 Wis. 2d 702, 727 N.W. 2d 1, 04−0583.

A prisoner has the following rights after he or she files a request for disposition under sub. (3): 1) transportation to a receiving state to answer pending charges; 2) commencement of a trial within 180 days in the receiving state; 3) return to the sending state to complete the prisoner's term of incarceration; and 4) upon completion of the prisoner's term of incarceration in the sending state, return to the receiving state to serve any term of incarceration that has been imposed there. Pharm v. Bartow, 2007 WI 13, 298 Wis. 2d 702, 727 N.W. 2d 1, 04−0583.

Once a prisoner has properly requested a prompt and final disposition of pending criminal charges, the only way the state could avoid its obligation to bring the prisoner to trial within 180 days of the request under sub. (3) was to dismiss the untried complaint or information. Because the state only modified the arrest warrant to rule out nationwide extradition and did not withdraw the detainer and dismiss the criminal complaint, the source for the prisoner's request for a speedy trial was still in existence. State v. Tarrant, 2009 WI App 121, 321 Wis. 2d 69, 772 N.W.2d 750, 08−1736.

A detainer is a notification filed with the institution in which a prisoner is serving a sentence, advising that the prisoner is wanted to face pending criminal charges in another jurisdiction. How a prison first learns of a warrant or pending charges has no bearing on whether a detainer has been lodged. What matters is whether a notification satisfying the definition of a detainer is filed. Here, the sheriff's department confirmed for the prison the existence of a nationwide arrest warrant and pending charges, and then faxed copies directly to the prison, which constituted a detainer. State v. Onheiber, 2009 WI App 180, 322 Wis. 2d 708, 777 N.W.2d 682, 09−0460.

When the defendant presented no evidence demonstrating that a 3rd party who signed a receipt for defendant's request for a speedy trial was an agent for the prosecuting officer in this case, the date on which the defendant "caused to be delivered to the prosecuting officer" his request for a speedy trial under sub. (3) (a) was the date on which the parties agreed that the request was delivered to the district attorney's office. State v. Thomas, 2013 WI App 78, 348 Wis. 2d 699, 834 N.W.2d 425, 12−0823.

Pursuant to *Blackburn*, in the absence of evidence of intentional or negligent sabotage by the state, the defendant is required to strictly comply with this section's technical requirements. State v. Thomas, 2013 WI App 78, 348 Wis. 2d 699, 834 N.W.2d 425, 12−0823.

A writ of habeas corpus ad prosequendum issued by a federal court directing state authorities to produce a state prisoner for a federal criminal trial is not a detainer under this section. United States v. Mauro, 436 U.S. 340 (1978).

A prisoner has a right to a pretransfer hearing. Cuyler v. Adams, 449 U.S. 433 (1981).

976.06 Agreement on detainers; additional procedure. Following receipt of the officer's written request as provided in s. 976.05 (4) (a), the prisoner shall forthwith be taken before a judge of a court of record of this state, who shall inform the prisoner of the request for temporary custody or availability, the crime with which charged and that the prisoner has the right to petition the governor to deny the request, to contest the request and to demand and procure legal counsel. If the prisoner or the prisoner's counsel shall state that the prisoner or the prisoner and counsel desire to test the legality of granting temporary custody or availability, the judge shall set a date for hearing which shall be not later than the expiration of the 30−day period established by s. 976.05 (4) (a). If a hearing is set, notice of the hearing shall be given to the appropriate officer of the state requesting temporary custody or availability and to the authorities having custody of the prisoner in this state. The scope of any hearing or ruling under this section shall be confined to the request for temporary custody or availability, and to the identification of the person sought by the requesting state, but shall not encompass the guilt or innocence of the prisoner as to the crime charged by the requesting state.

History: 1975 c. 158, 199; 1981 c. 390.

NOTE: See drafting file in Legislative Reference Bureau for Legislative Council Note to original bill. [Bill 263−A]

The state's failure to hold a hearing within the 30−day period required discharge of the prisoner from a detainer. State v. Sykes, 91 Wis. 2d 436, 283 N.W.2d 446 (Ct. App. 1979).

Failure to meet the 30−day time limit requires the commencement of a new proceeding in order to obtain temporary custody over the subject of the petition. State ex rel. Kerr v. McCaughtry, 183 Wis. 2d 54, 515 N.W.2d 276 (Ct. App. 1994).

A defendant is prohibited from raising a constitutional issue on an s. 974.06 motion if the claim could have been raised in a previously filed s. 974.02 motion or a direct appeal. State v. Escalera−Naranjo, 185 Wis. 2d 169, 517 N.W.2d 157 (1994).

976.07 Agreements on extradition; Indian tribes. **(1)** The attorney general may negotiate an agreement with any Indian tribe within the borders of this state exercising powers of self−government within the Indian country as defined in 18 USC 1151 to which this state has retroceded jurisdiction under 25 USC 1323, relating to the extradition of witnesses, fugitives and evidence found within the respective jurisdictions of this state and the tribe.

(2) An agreement negotiated under sub. (1) shall provide that a court of the sending jurisdiction, before issuing an order for the extradition of any person, shall:

(a) Notify the person named in the extradition warrant of the right to a hearing and to legal counsel.

(b) Hold a hearing to determine:

1. That the person named in the warrant is the person charged with the crime or is the witness demanded.

2. That there is probable cause to believe that the person named in a criminal extradition warrant was present in the demanding jurisdiction at the time of the alleged crime or that the person committed an act in any place with intent to commit a crime in the demanding jurisdiction.

(c) If the person contests the legality of his or her arrest, allow a reasonable time within which the person may commence an action for habeas corpus.

(3) The attorney general shall submit agreements negotiated under sub. (1) to the governor for approval. The governor shall have 30 days in which to review the agreement. If the governor takes no action within 30 days, the agreement becomes effective.

(4) The attorney general shall provide technical assistance and material support necessary to implement any agreement under this section.

(5) An agreement under this section may be revoked by the governor, after consulting with the attorney general, or by the tribal chairperson upon 6 months' written notice to the other party unless a different period of time is specified in the agreement.

(6) This section does not:

(a) Enlarge the criminal or civil jurisdiction of either the state or a tribal government under federal law.

(b) Permit an Indian tribe to enter into agreements other than those authorized by its organizational documents and laws.

(c) Permit this state or any of its political subdivisions to enter into agreements prohibited by the state constitution.

History: 1981 c. 368, 391.

976.08 Additional applicability. In this chapter, "prisoner" includes any person subject to an order under s. 938.183 who is confined to a Wisconsin state prison.

History: 1987 a. 27; 1995 a. 77; 2005 a. 344; 2013 a. 334.