

required to bear arms on property in this State other than that of a military reservation full compliance with the above cited statute is an essential requisite.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: JOSEPH LANIGAN,
Deputy Attorney General.

JL:rk

OCTOBER 30, 1950.

COL. CHARLES H. SCHOEFFEL, *Supt.*,
Division of State Police,
Department of Law and Public Safety,
State House,
Trenton 7, New Jersey.

FORMAL OPINION—1950. No. 69.

DEAR COLONEL SCHOEFFEL:

You desire to be advised concerning the correct procedure to be followed in the matter of the apprehension, arrest and arraignment of an individual resident in New Jersey whose extradition is sought to another jurisdiction.

You advise that at least one municipal magistrate seems to have the impression that he cannot effect the arrest of such individual before issuance of the Governor's warrant following requisition by the demanding State.

It is our opinion and we advise you that this is an improper interpretation of the law and that, on the contrary, provision is made in our Uniform Extradition Act for the arrest of the accused before issuance of the Governor's warrant and even before requisition by the demanding jurisdiction.

It appears advisable to review the law on the subject matter to dispel any doubts that have arisen with respect thereto and further to the end that New Jersey may at all times fully co-operate with other states which seek to utilize the process of extradition.

R. S. 2:185-21 provides:

(a) that any credible person in this State may file complaint with any judge or magistrate that the accused has committed crime in another jurisdiction or has been convicted and has escaped or broken the terms of his bail, probation or parole.

(b) that complaint may be made before any judge or magistrate in this State on the affidavit of a credible person in another state that a crime has been committed in that jurisdiction and that the accused has fled from justice or, having been convicted, has escaped or broken the terms of his bail, probation and parole and is believed to be in New Jersey.

The judge or magistrate shall thereupon issue a warrant directing the apprehension of the person named and cause him to be brought before the court or any other court

which may be available or convenient to answer the charge or complaint and affidavit. It is provided that a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

This procedure, at first blush, appears to be rather formal and may lead to the belief that, during the time required to prepare these papers, the accused may again take flight.

In any situation of emergency, the accused, pursuant to R. S. 2:185-22, may be arrested without warrant by any peace officer or a private person, upon reasonable information that the accused stands charged in the courts of another state with a crime punishable either by death or imprisonment for a term exceeding one year.

However, when any such arrest is made without warrant, the statute is explicit as to what must be done thereafter with the accused. He "must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in Section 2:185-21 * * * and thereafter his answer shall be heard as if he had been arrested on a warrant."

This may seem extremely harsh but an examination of the remaining provisions of the law, R. S. 2:185-23 et seq., discloses that the detention shall not exceed 30 days and bail may be secured unless the offense is punishable by death.

During the intervening period, the demanding state makes its requisition and the Governor of New Jersey, after examination of the circumstances, may elect to issue his warrant as provided by law.

In order to effect substantial compliance with our Uniform Extradition Act, it is suggested that whenever information reaches a judge or magistrate to the effect that the accused has committed crime and is required in another jurisdiction, the better practice would seem to be to have a complaint entered on information and belief by one of the police officers so that the warrant may issue for the arrest of the individual.

However, in situations of emergency, where insufficient time renders it impossible to secure the warrant and execute the complaint, the individual should be apprehended and brought forthwith before the magistrate and the complaint drawn at that time. Our courts, in *LaSasso vs. MacLeod*, 136 N. J. L. 345, considered a situation where the accused, having been arrested without warrant, was detained for three days before the complaint was issued. The court did not condone or approve the procedure but, without expressing opinion as to the validity of the arrest of the accused, nevertheless, determined that he was amenable to the requisition of the Governor of the demanding state and upon proof of full compliance with the statutory requirements concerning rendition, ordered his return to the other state.

It is to be hoped that the judges and magistrates will apply either of the alternate procedures suggested herein as the circumstances may require so that New Jersey may at all times co-operate in extradition matters with demanding states.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: EUGENE T. URBANIAK,
Deputy Attorney General.

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