

N.D.A.G. Letter to Flagstad (Feb. 14, 1990)

February 14, 1990

Mr. Mark A. Flagstad
Assistant State's Attorney
Ward County Courthouse
Minot, ND 58701

Dear Mr. Flagstad:

Thank you for your February 12, 1990, letter concerning the procedures to be followed in the processing of persons wanted for offenses occurring outside of the State of North Dakota.

N.D.C.C. ch. 29-30.3 governs the procedures to be followed in apprehending and processing persons in North Dakota who have committed crimes outside of the state of North Dakota. This chapter recognizes distinctions between the proceedings to be followed when a person has been arrested without a warrant or arrested under a North Dakota court warrant and those proceedings to be followed after an arrest on a Governor's warrant.

If a person who has committed an offense outside of the State of North Dakota, is arrested without a warrant (N.D.C.C. § 29-30.3-04) or upon a warrant issued by a North Dakota court (N.D.C.C. § 29-30.3-05), the fugitive must make an appearance before a magistrate. The proceedings to be followed for that appearance before the magistrate are set forth in N.D.C.C. § 29-30.3-06. If the fugitive waives a judicial hearing and extradition, the court will either issue an order to transfer custody to the out-of-state agents or authorize the voluntary return of that person to the other state. If a waiver is not executed pursuant to law, the magistrate will either release the fugitive on bail or hold the fugitive in custody until such time as a North Dakota Governor's warrant arrives in the local jurisdiction to complete the extradition proceedings. However, a fugitive may only be subject to the conditional bail release or be held in custody for a period of 30 days unless that 30 day time period is extended pursuant to N.D.C.C. § 29-30.3-07.

When the North Dakota Governor's warrant has been issued, the fugitive will be arrested under that warrant. This Governor's warrant is an arrest warrant authorizing the arrest and extradition of the fugitive to the other state. The fugitive will be placed under arrest pursuant to the Governor's warrant and, if not already in custody, may be then taken into custody pursuant to that warrant. N.D.C.C. § 29-30.3-12.

After arrest of the fugitive on the Governor's warrant, the fugitive will then be taken before a judge for an appearance on the Governor's warrant. If the fugitive had previously been arrested without a warrant or under a North Dakota court issued warrant, this would be the second appearance the fugitive would have before the magistrate. At this appearance

on the Governor's warrant of arrest, the fugitive would then again be given the opportunity to waive further hearing and extradition. As in the case of the earlier appearance, if the waiver is executed, an order to transfer custody may be issued or the fugitive may be authorized to voluntarily return to the other state. If a hearing on the Governor's warrant is not waived, the magistrate will hold the hearing within ten days after this appearance and the fugitive may either be released on bail or held in custody. N.D.C.C. § 29-30.3-13.

If the court finds the extradition request to be proper under law, the court will then order the transfer of custody of the fugitive to the other state. N.D.C.C. § 29-30.3-14.

After issuance of the order to transfer custody, the agent for the other state will have ten days to take the fugitive into custody. If the agent has not done so, the fugitive may be released by bail or the ten day time period may be extended for an additional ten days.

We have occasionally received questions concerning the extradition law in North Dakota and the differences between the court-issued warrants and the Governor's warrant. As I have indicated, the Governor's warrant is a separate and identifiable authorization to arrest a fugitive. The North Dakota court-issued warrant authorizes the arrest of a fugitive prior to the issuance of the Governor's warrant by the North Dakota Governor.

The North Dakota Governor's warrant will be accompanied by a recognition of the demand for extradition as well as all documents received from the Governor of the demanding state, which includes the charging documents. The ten day time period for a judicial hearing on the extradition demand applies only after the arrest of the fugitive upon the Governor's warrant. If the fugitive has been arrested prior to receipt of the Governor's warrant and corresponding documentation, a 30-day time period is applicable. This 30-day period is the time in which the Governor's warrant must be received by the local jurisdiction unless that time period is extended.

I hope that this information will be of assistance to you. Should you desire further clarification of these provisions, please do not hesitate to contact me at your convenience.

Sincerely,

Nicholas J. Spaeth

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