

CHAPTER 2.**CRIMINAL EXTRADITION****ARRANGEMENT OF SECTIONS****Section**

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An Act to provide for procedures to govern criminal extraditions and matters associated therewith. This Act was codified formerly as Part X of Chapter 1 of this Title.

Source: TTC 1966
 12 TTC 1970
 COM P.L. 7-4 (1977)
 12 TTC 1980

§201. Short title.

This Chapter may be cited as the "Criminal Extradition Act".

[Short title supplied by the Commissioner]

§202. Interpretation.

Where appearing in this Part:

(a) “Cabinet” includes a member of the Cabinet or any person acting on authority of the Cabinet;

(b) “executive authority” includes the head of state, and any person or body performing the functions of head of state in any nation, state, territory, or subdivision thereof, outside of the Republic. [12 TTC 1970, §451; COM P.L. 7-4, §1 (1977); 12 TTC 1980, §451, modified.]

§203. Fugitives from justice; duty of the Cabinet.

Subject to the provisions of this Chapter the Cabinet shall have arrested and delivered up to the executive authority of another government any person charged with treason, felony, or other crime, who has fled from justice and is found in the Republic. [12 TTC 1970, §452; 12 TTC 1980, §452, modified.]

§204. Form of request.

(1) No request for the extradition of a person charged with or convicted of crime in another nation, state, territory or subdivision thereof, hereinafter “foreign country” shall be recognized by the Cabinet unless in writing alleging, except in cases arising under Section 208 of this Chapter, that the accused was present in the requesting foreign country at the time of the commission of the alleged crime and that thereafter he fled from such foreign country. Such demand shall be accompanied by:

(a) a copy of an indictment found;

(b) a copy of an information supported by an affidavit filed in the foreign country having jurisdiction of the crime;

(c) a copy of an affidavit made before a magistrate in such foreign country together with a copy of any warrant which was issued thereon; or

(d) 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 requesting state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole.

(2) The indictment, information or affidavit made before the magistrate must substantially charge the person requested with having committed a crime under the law of the requesting foreign country and the copy must be authenticated by the executive authority making the request, which shall be prima facie evidence of its truth. [12 TTC 1970, §453; 12 TTC 1980, §453, modified.]

§205. Official investigation of request for extradition.

When a request shall be made upon the Cabinet by the executive authority of a foreign country for the surrender of a person charged with or convicted of a crime, the Cabinet may call upon the Attorney-General or any prosecuting officer in the Republic to investigate or assist in

investigating the request and to report to it the situation and circumstances of the person so requested, and whether he ought to be surrendered. [12 TTC 1970, §454; 12 TTC 1980, §454, modified.]

§206. Extradition of person imprisoned or awaiting trial in another country.

When it is desired to have returned to the Republic a person charged in the Republic with a crime and such person is imprisoned or is held under criminal proceedings then pending against him in a foreign country, the Cabinet may agree with the executive authority of such foreign country for the extradition of such person before the conclusion of such proceedings or his term of sentence in such foreign country, upon condition that such person be returned to such foreign country at the expense of the Republic as soon as the prosecution in the Republic is terminated. [12 TTC 1970, §455; 12 TTC 1980, §455, modified.]

§207. Extradition of persons who have left requesting foreign country involuntarily.

The Cabinet may also surrender on request of the executive authority of any foreign country any person in the Republic who is charged, in the manner provided in Section 225 of this Chapter, with having violated the laws of the foreign country whose executive authority is making the request, even though such person left the requesting foreign country involuntarily. [12 TTC 1970, §456; 12 TTC 1980, §456, modified.]

§208. Extradition of persons not present in requesting foreign country at time of commission of crime.

The Cabinet may also surrender, on request of the executive authority of any foreign country, any person in the Republic charged in such state, in the manner provided in Section 204 of this Chapter, with committing an act in the Republic, or in a third state, intentionally resulting in a crime in the foreign country whose executive authority is making the request. The provisions of this Chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that foreign country at the time of the commission of the crime, and has not fled therefrom. [12 TTC 1970, §457; 12 TTC 1980, §457, modified.]

§209. Cabinet's warrant of arrest; issuance; recitals.

If the Cabinet decides that a request for extradition of a person charged with, or convicted of, a crime in a foreign country should be complied with, it shall sign a warrant of arrest, which shall be sealed with the seal of the Republic and be directed to the Attorney-General, Chief of Police, or other person whom he may think fit to be entrusted with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. [12 TTC 1970, §458; 12 TTC 1980, §458, modified.]

§210. Same; manner and place of execution.

Such warrant shall authorize the officer or other person to whom it is directed to arrest the accused at any time and at any place where he may be found within the Republic, and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this Chapter, to the duly authorized agent of the requesting foreign country. [12 TTC 1970, §459; 12 TTC 1980, §459, modified.]

§211. Same; assistance to arresting officer.

Every officer or other person empowered to make the arrest, as provided in Section 209 of this Chapter, shall have the same authority in arresting the accused to command assistance therein as the Attorney-General, the Chief of Police and other officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance. [12 TTC 1970, §460; 12 TTC 1980, §460, modified.]

§212. Same; rights of accused persons; application for writ of habeas corpus.

No person arrested upon such warrant shall be delivered over to the agent whom the executive authority requesting him shall have appointed to receive him unless he shall first be taken forthwith before a judge of the High Court of the Republic, who shall inform him of the request made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the court shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the Attorney-General of the Republic and to the agent of the requesting foreign country. [12 TTC 1970, §461; 12 TTC 1980, §461, modified.]

§213. Same; penalty for noncompliance.

Any officer who shall deliver a person in his custody under the Cabinet's warrant to the agent for extradition of the requesting state in disobedience of Section 212 of this Chapter shall be guilty of a misdemeanor and shall upon conviction be liable to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding six (6) months, or both. [12 TTC 1970, §462; 12 TTC 1980, §462, modified.]

§214. Same; confinement in jail authorized when necessary.

The officer or person executing the Cabinet's warrant of arrest, or the agent of the requesting foreign country to whom the prisoner is to be delivered may, when necessary, confine the prisoner in any jail of the Government of the Marshall Islands and the warden of such jail shall receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping the prisoner. [12 TTC 1970, §463; 12 TTC 1980, §463, modified.]

§215. Arrest prior to requisition; by warrant.

A justice or court shall issue a warrant directed to the Attorney-General or Chief of Police commanding him to apprehend the person named therein wherever he may be found in the Republic and to bring him before the High Court to answer the charge or complaint and affidavit. A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant whenever:

(a) any person within the Republic shall be charged on the oath of any credible person before any judge or magistrate of the Republic with the commission of a crime in any foreign country; and, except in cases arising under Section 208 of this Chapter, with having fled from justice, with having

been convicted of a crime in that foreign country and with having escaped from confinement, or with having broken the terms of his bail, probation, or parole; or

(b) complaint shall have been made before the High Court setting forth on the affidavit of any credible person in a foreign country that a crime has been committed in such other foreign country and that the accused has been charged in such foreign country with the commission of the crime, and, except in cases arising under Section 208 of this Chapter, has fled from justice, or that the accused has been convicted of a crime in that foreign country and has escaped from confinement, or has broken the terms of his bail, probation or parole, and that the accused is believed to be in the Republic. [12 TTC 1970, §464; 12 TTC 1980, §464, modified.]

§216. Same; without a warrant.

The arrest of a person may also be lawfully made by any policeman or private citizen without a warrant upon reasonable information that the accused stands charged in the courts of a foreign country with a crime punishable by death or imprisonment for a term exceeding one year. When so arrested the accused must be taken before the High Court with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding Section and thereafter his answer shall be heard as if he had been arrested on a warrant. [12 TTC 1970, §465; 12 TTC 1980, §465, modified.]

§217. Same; commitment to await requisition.

If from the examination before the High Court it appears that the person held pursuant to either of the two preceding Sections is the person charged with having committed the crime alleged and, except in cases arising under Section 208 of this Chapter, that he has fled from justice, the High Court shall, by a warrant reciting the accusation, commit him to jail for such a time not exceeding forty-five (45) days specified in the warrant as will enable the arrest of the accused to be made under a warrant of the Cabinet on a requisition of the executive authority of the foreign country having jurisdiction of the offense, unless the accused shall give bail as provided in Section 218 of this Chapter, or until he shall be legally discharged. [12 TTC 1970, §466; 12 TTC 1980, §466, modified.]

§218. Bail; when allowed; 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 foreign country in which it was committed, the High Court may admit the person arrested to bail by bond or undertaking, with sufficient sureties, and in such sum as the court deems proper, conditioned upon his appearance before it at a time specified in such bond or undertaking, and upon his surrender for arrest upon the warrant of the Cabinet. [12 TTC 1970, §467; 12 TTC 1980, §467, modified.]

§219. Same; discharge, recommitment or renewal.

If the accused is not arrested under warrant of the Cabinet by the expiration time specified in the warrant, bond, or undertaking, the High Court may discharge him or may recommit him to a further day, or may again take bail for his appearance and surrender, as provided in Section 218 of this Chapter. At the expiration of the second period of commitment, or if he has been bailed and

appeared according to the terms of his bond or undertaking, the court may either discharge him, or may require him to enter into a new bond or undertaking, to appear and surrender himself at another day. [12 TTC 1970, §468; 12 TTC 1980, §468, modified.]

§220. Same; forfeiture.

If the prisoner is admitted to bail and fails to appear and surrender himself according to the condition of his bond, the High Court shall declare the bond forfeited and order his immediate arrest without warrant if he be within the Republic. Recovery may be had on such bond in the name of the Republic as in the case of other bonds or undertakings given by the accused in criminal proceedings within the Republic. [12 TTC 1970, §469; 12 TTC 1980, §469, modified.]

§221. Persons under criminal prosecution in the Republic at time of requisition.

If a criminal prosecution has been instituted under the laws of the Republic against a person subject to extradition and is still pending, the Cabinet, in its discretion, either may surrender him on the demand of the executive authority of a foreign country or may hold him until he has been tried and discharged or convicted and punished in the Republic. [12 TTC 1970, §470; 12 TTC 1980, §470, modified.]

§222. Inquiry into guilt or innocence of accused.

Except as that may be involved in identifying the person held as the person charged with the crime, the Cabinet shall make no inquiry into the guilt or innocence of the accused as to the crime of which he is charged, nor may any such inquiry be made in any proceeding after presentation to the Cabinet of the demand for extradition accompanied by a charge of crime in legal form as provided in this Chapter. [12 TTC 1970, §471; 12 TTC 1980, §471, modified.]

§223. Cabinet may recall warrant or issue additional warrant.

When the return to the Republic of a person charged with a crime in the Republic is required, the Attorney-General or his assistant shall present to the Cabinet his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the foreign country in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that, in the opinion of the Attorney-General or his assistant, the ends of justice require the arrest and return of the accused to the Republic for trial, and that the proceeding is not instituted to enforce a private claim. [12 TTC 1970, §474; 12 TTC 1980, §474, modified.]

§224. Fugitives from the Republic; issuance of warrant to receive and convey.

Whenever the Cabinet shall demand from the executive authority of a foreign country a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in the Republic, he shall issue a warrant under the seal of the Republic to some agent commanding him to receive the person so charged if delivered to him and convey him the proper officer of the Government of the Marshall Islands. [12 TTC 1970, §473; 12 TTC 1980, §473, modified.]

§225. Same; applications for requisition; return of person charged with crime.

When the return to the Republic of a person charged with a crime in the Republic is required, the Attorney-General or his assistant shall present to the Cabinet his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the foreign country in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that, in the opinion of the Attorney-General or his assistant, the ends of justice require the arrest and return of the accused to the Republic for trial, and that the proceeding is not instituted to enforce a private claim. [12 TTC 1970, §474; 12 TTC 1980, §474, modified.]

§226. Same; same; escaped convict.

When the return to the Republic is required of a person who has been convicted of a crime in the Republic and who has escaped from confinement or broken the terms of his bail, probation or parole, the Attorney-General shall present to the Cabinet a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, and the foreign country in which he is believed to be, including the location of the person therein at the time application is made. [12 TTC 1970, §475; 12 TTC 1980, §475, modified.]

§227. Same; same; form of applications; copies, etc.

The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two (2) certified copies of the information and affidavit filed, or of the complaint made to the judge or court charged, or of the judgment of conviction, or of the sentence. The Attorney-General or his assistant may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. [12 TTC 1970, §476; 12 TTC 1980, §476, modified.]

§228. Same; costs and expenses.

The expenses included to the extradition of any person under Sections 224 to 227 of this Chapter shall be paid out of the appropriate public fund of the Republic. [12 TTC 1970, §477; 12 TTC 1980, §477, modified.]

§229. Immunity from service of process in certain civil actions.

A person brought into the Republic 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 he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had ample opportunity to return to the foreign country from which he was extradited. [12 TTC 1970, §478; 12 TTC 1980, §478, modified.]

§230. Waiver of extradition proceedings.

(1) Any person arrested in the Republic and charged with having committed any crime in any foreign country, or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in Sections 209 and 210 of this Chapter and all other procedure incidental to extradition proceedings by executing or subscribing in the presence of a justice of the High Court within the Republic a writing which states that he consents to return to the requesting foreign country.

(2) The justice shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent of the requesting foreign country, and shall deliver or cause to be delivered to such agent a copy of such consent; provided, however, that nothing in this Section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the requesting foreign country, nor shall this waiver procedure be deemed to be an executive procedure or to limit the powers, rights or duties of the officers of the requesting foreign country or of the Republic. [12 TTC 1970, §479; 12 TTC 1980, §479, modified.]

§231. Procedures of Chapter not deemed waiver of Republic's rights.

Nothing in this Chapter shall be deemed to constitute a waiver by the Republic of its right, power or privilege to try such requested person for crime committed within the Republic, 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 the Republic; nor shall any proceedings had under this Chapter which result in, or fail to result in, extradition be deemed a waiver by the Republic of any of its rights, privileges, or jurisdiction in any way whatsoever. [12 TTC 1970, §480; 12 TTC 1980 §480, modified.]

§232. Immunity from other criminal prosecutions while in the Republic.

After a person has been brought back to the Republic by or after waiver of extradition proceedings, he may be tried in the Republic for other crimes which he may be charged with having committed therein as well as that crime specified in the requisition for his extradition. [12 TTC 1970, §481; 12 TTC 1980, §481, modified.]