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**TO: Sen. Nader Hashim, Chair
Senate Committee on Judiciary**

**FROM: Todd Daloz, Assistant Attorney General
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DATE: March 13, 2025

RE: S. 87 – Written Testimony Regarding Prior Waiver of Extradition

The Attorney General’s Office supports the modifications of the Vermont’s extradition statutes proposed in S.87. These amendments would promote efficiency in extradition proceedings while addressing the unnecessary burden the current process can impose on limited criminal justice resources. This testimony provides an overview of the current extradition process and further details on the Attorney General’s Office position.

Legal Background

The Extradition Clause of the United States Constitution¹ and the effectuating federal statutes² grant states the authority to demand the extradition or rendition of a person who has committed a crime and fled to another state. Under the Extradition Clause, “the State of Vermont is required to turn over any person charged with a crime in another state upon request by that state’s executive authority.”³ The purpose of the Extradition Clause is to promote each state’s strong interest in the timely prosecution of those charged with crimes committed in their

¹ U.S. Const. Art. IV, § 2, cl. 2.

² 18 U.S.C. §§ 3181 to 3196.

³ U.S. Const. art. IV, § 2, cl. 2; In re LaPlante, 2014 VT 79, ¶ 5.

state who have fled. The principles of comity as well as full faith and credit play an integral role in the extradition process.

Almost all states have adopted the Uniform Criminal Extradition Act. Regarding waivers of extradition, the language in the Act states:

(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, or parole may waive the issuance and service of the warrant provided for in sections 4947 and 4948 of this title 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 that states that he or she consents to return to the demanding state; provided however, before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his or her rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section 4950 of this title.

(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; 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 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.

13 V.S.A. § 4967.

Current Extradition Process

Currently, the only waiver of formal extradition proceedings recognized in Vermont are those signed by a fugitive before a judge on the record in writing following an advisement of rights.

In many states, when a defendant with a pending case is ordered to conditions of release, or when an offender is placed on probation, furlough, or parole, they sign a waiver of extradition stating that if they flee the state in violation of their conditions, probation, or parole, they have waived the formal extradition requirements of the Uniform Criminal Extradition Act and may be immediately returned to the demanding state. Vermont currently does not recognize such waivers of extradition signed by a fugitive in the demanding state but doing so could accomplish the efficient, timely extradition of fugitives from Vermont far more concisely than our current formal extradition proceedings.

When a fugitive flees from justice, the prosecuting agency enters a warrant for their arrest in the National Crime Information Center (NCIC) database. NCIC is a computerized index of missing persons and criminal information, with fugitive and arrest warrant information available to law enforcement nationwide. When a fugitive is arrested in Vermont, law enforcement contacts the issuing agency in the demanding state to confirm that the warrant is active and extraditable. They take the fugitive into custody, confirm their identity, and prepare the required documentation for a fugitive complaint to be filed in Vermont. This includes:

- Information from NCIC stating the fugitive is wanted and the issuing agency;
- An affidavit from Vermont law enforcement with the circumstances of arrest and identification, and the underlying charge or conviction, and the basis for the warrant in the demanding state and its maximum sentence;
- Documentation from the demanding state including charging documents, judgments of conviction and conditions of probation or parole, law enforcement affidavits, the active arrest warrant, and identification such as photographs, fingerprints, or an affidavit by law enforcement in the demanding state.

This documentation is then provided to the State's Attorney where the arrest took place, who prepares a complaint and petition for interstate rendition of the fugitive. The complaint and supporting documentation are filed with the Court, which generates a fugitive case. The fugitive is then brought before the court, arraigned on the petition, and decides whether to voluntarily waive extradition pursuant to 13 V.S.A. § 4967. If the fugitive waives extradition, they are promptly extradited. If not, bail is set unless the offense they are charged with in the demanding state is punishable by life imprisonment, and then the fugitive case continues pending issuance of a Governor's Warrant.

At this point, the State's Attorney notifies the prosecution in the demanding state of the fugitive's refusal to waive extradition. The prosecutor in the demanding state then prepares a requisition request, which is typically sent to the state's Department of Justice or Attorney General's Office for review. After review the requisition request is then sent to the demanding state's governor for signature. In Vermont pursuant to 13 V.S.A. § 4944, the request is then sent to the Vermont Attorney General's Office – Criminal Division, where it is reviewed to ensure it meets the legal requirements set forth in 13 V.S.A. § 4943. If the request is sufficient it is sent to the Governor's Office for further review and issuance of a Governor's Warrant. The Governor's Warrant is then sent to the sheriff for service where the fugitive is incarcerated or living if granted bail.

Upon service of the Governor's Warrant, the fugitive is again brought before the court to be advised of the demand for their surrender, the crime they are charged with in the demanding state, their right to counsel, and to allow a reasonable time for the fugitive to apply for a writ of habeas corpus. 13 V.S.A. § 4950. Unless a writ is filed and accompanied by an order staying extradition, the fugitive is surrendered to the demanding state.

Acceptance of Prior Signed Waivers

S.87 seeks to codify the acceptance of prior signed waivers of extradition to expedite extradition proceedings, which consume time and resources from all parties in the criminal justice system in both the demanding and asylum states, including law enforcement, prosecutors, defense counsel, the courts, and governors.

Many states have statutes allowing extradition by law enforcement or corrections upon receipt of prior waivers of extradition signed by the fugitive in the demanding state.⁴ California provides for a de minimis hearing for the court to find probable cause that the fugitive signed a waiver of extradition in the demanding state,⁵ while other state courts have interpreted their extradition statutes to allow extradition without a governor's warrant based on pre-signed waivers.⁶ The National

⁴ See Arizona A.R.S. § 13-3865.01(C); Arkansas A.C.A. § 16-94-103(d); Colorado C.R.S.A. § 16-19-126.5; Florida West's F.S.A. § 941.26(3); Hawaii HRS § 832-25(b); Idaho I.C. § 19-4530; Maine 15 M.R.S.A. § 226; Michigan M.C.L.A. 780.25a; Montana MCA 46-30-229; Nevada N.R.S. 179.229; New Hampshire N.H. Rev. Stat. § 612:5-a; Oregon O.R.S. § 133.843; Pennsylvania 42 Pa.C.S.A. § 9146.1; Utah U.C.A. 1953 § 77-30-26.5; Washington West's RCWA 10.88.415; West Virginia (W. Va. Code, § 62-14A-6(c).

⁵ See California Cal. Penal Code § 1555.2 (West).

⁶ See, e.g., Maryland *White v. Hall*, 15 Md. App. 446, 449, 291 A.2d 694, 696 (Md. Ct. Spec. App. 1972); Minnesota *State ex rel. Swyston v. Hedman*, 288 Minn. 530, 531–32, 179 N.W.2d 282, 284

Association of Extradition Officials adopted a resolution recommending that all states adopt legislation recognizing pre-signed waivers of extradition in recognition of the immense resources required for formal extradition proceedings as opposed to the efficiency of recognizing pre-signed waivers.

Attorney General’s Position and Recommendations

As stated, the Attorney General supports the effort to recognize pre-signed waivers of extradition. In Vermont, at least half of the requisition requests reviewed by the Attorney General’s Office contained pre-signed waivers of extradition, and we believe this update will enhance the efficiency and timeliness of these requests. Additionally, we would suggest two minor edits to S.87 (pages 3-4), as noted below:

§ 4967. WRITTEN WAIVER OF EXTRADITION PROCEEDINGS

(c) Notwithstanding any other provision of law, a law enforcement or corrections agency in this State holding a person who is alleged to have broken the terms of the person’s probation, parole, bail, or any other release in the demanding state shall immediately deliver that person to the duly authorized agent of the demanding state without the requirement of a Governor’s warrant if all of the following apply:

...

(2) The law enforcement or corrections agency holding the person has received an authenticated copy of the prior waiver of extradition signed by the person and photographs or fingerprints or other evidence properly identifying the person as the person who signed the waiver. These documents may be received by reliable electronic means.

The first suggestion—the addition of “or corrections” in two locations—is to address a somewhat unique aspect of Vermont’s criminal justice system. Vermont, unlike many states, does not have local jails or local holding facilities but instead has a state correctional system. This means that local law enforcement agencies may lack the ability or resources to hold a fugitive pending receipt and confirmation of authenticated documents, or until the demanding state can take custody. The inclusion of “corrections” in the proposed bill allows the Vermont Department of Corrections (“DOC”) to lodge fugitives, verify pre-signed waivers and ascertain identification. This would ensure consistency and uniformity throughout the state

(Minn. 1970); New York *People v. Gordon*, 176 Misc.2d 46, 54-55, 672 N.Y.S.2d 631 (N.Y. Sup. Ct. 1998); Texas *Ex parte Johnson*, 610 S.W.2d 757, 759–60 (Tex. Crim. App. 1980).

while alleviating the piecemeal burden from local law enforcement agencies. This inclusion would also clarify that fugitives may be held by DOC pending verification of identity and pre-signed waivers.

The second suggested edit would allow receipt of authenticated documents by reliable electronic means. This would also expedite verification and reduce the time a fugitive may be held in Vermont awaiting extradition.

Finally, the Attorney General's Office also supports the proposed changes to 13 V.S.A. § 4955, amending the time that a fugitive may be committed to jail or granted bail while awaiting extradition from 30 to 120 days. As outlined above, it can be a lengthy process for the demanding state to issue a requisition request and for a governor's warrant to issue. Extending the time before a fugitive petition is dismissed conserves resources for all parties involved by allowing a pending fugitive case to continue while formal extradition proceedings are carried out.

In conclusion, the Attorney General's Office supports S.87 as we believe it promotes efficiency in extradition proceedings while addressing an unnecessary burden on limited criminal justice resources.