

ARREST - Application of Uniform Criminal Extradition Act, rather than Interstate Compact on Juveniles, to nondelinquent youth charged with crime in another state;
CORRECTIONAL FACILITIES - Application of Uniform Criminal Extradition Act, rather than Interstate Compact on Juveniles, to nondelinquent youth charged with crime in another state;
FELONS - Application of Uniform Criminal Extradition Act, rather than Interstate Compact on Juveniles, to nondelinquent youth charged with crime in another state;
INSTITUTIONS, DEPARTMENT OF - Application of Uniform Criminal Extradition Act, rather than Interstate Compact on Juveniles, to nondelinquent youth charged with crime in another state;
INTERGOVERNMENTAL COOPERATION - Application of Uniform Criminal Extradition Act, rather than Interstate Compact on Juveniles, to nondelinquent youth charged with crime in another state;
JUVENILE DELINQUENCY - Application of Uniform Criminal Extradition Act, rather than Interstate Compact on Juveniles, to nondelinquent youth charged with crime in another state;

JUVENILES - Application of Uniform Criminal Extradition Act, rather than Interstate Compact on Juveniles, to nondelinquent youth charged with crime in another state;
SOCIAL AND REHABILITATION SERVICES, DEPARTMENT OF - Application of Uniform Criminal Extradition Act, rather than Interstate Compact on Juveniles, to nondelinquent youth charged with crime in another state;
MONTANA CODE ANNOTATED - Title 41, chapter 6; Title 46, chapter 30;
UNITED STATES CONSTITUTION - Article IV, section 2, clause 2.

- HELD: 1. The Interstate Compact on Juveniles, as currently adopted in Montana at Title 41, chapter 6, MCA, does not apply to youths who have not been adjudged delinquent and have not run away, but who are charged with a felony offense in another state.
2. Juveniles residing in Montana, and charged with a crime in another state, may be extradited under the Uniform Criminal Extradition Act, Tit. 46, ch. 30, MCA.

26 August 1985

Robert B. Brown
Ravalli County Attorney
Ravalli County Courthouse
Hamilton MT 59840

Dear Mr. Brown:

You have requested my opinion on the following two questions:

1. Does the Interstate Compact on Juveniles, Tit. 41, ch. 6, MCA, apply to youths who have not been adjudged delinquent and are not runaways, but who have been charged with a felony offense in another state?
2. If the Interstate Compact on Juveniles does not apply in this case, may a youth be extradited under the Uniform Criminal Extradition Act, Tit. 46, ch. 30, MCA?

As you know, the Montana Supreme Court has not addressed either question. But your first question can be answered by examining other states' interpretations of the Interstate Compact on Juveniles.

In Commonwealth ex rel. Reyes v. Aytch, 369 A.2d 1325, 1328 (Pa. Super. Ct. 1976), a 17-year-old youth was charged with murder in New Jersey. New Jersey petitioned Pennsylvania for his return under the Interstate Compact on Juveniles, but the Pennsylvania court held that since the youth had not run away from home, escaped from an institution, or been adjudged delinquent, the Interstate Compact on Juveniles did not apply. See also Matter of Brenda Lee G., 388 N.Y.S.2d 229, 230 (N.Y. Fam. Ct. 1976) (Interstate Compact on Juveniles does not apply to current resident charged with a crime in another state, but who has not been adjudged delinquent or run away); State in re Schreuder, 649 P.2d 19, 21-22 (Utah 1982) (Interstate Compact on Juveniles provides only for transfer of juveniles who are runaways or who have been adjudged delinquent).

In both Reyes v. Aytch and Brenda Lee G. the court decisions turned on the fact that the home state or "sending state" had not adopted article XVIII of the Interstate Compact on Juveniles, which provides that "[t]he interstate compact on juveniles shall be construed to apply to any juvenile charged with being delinquent by reason of a violation of any criminal law." Montana has not adopted this amendment either. Thus, any youth who has not run away, escaped, or been adjudged delinquent is outside the scope of the Interstate Compact on Juveniles in Montana.

Since the Interstate Compact on Juveniles does not apply to your case, I turn to your second question of whether a youth may be extradited under the Uniform Criminal Extradition Act, Tit. 46, ch. 30, MCA.

Extradition is mandated by the United States Constitution:

A person charged in any state with treason, felony or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to

be removed to the state having jurisdiction of the crime.

U.S. Const. art. IV, § 2, cl. 2.

The Uniform Criminal Extradition Act is ancillary to, and in aid of, the constitutional requirements of the United States Constitution. In re Robert, 406 A.2d 266, 268 (R.I. 1979).

The United States Supreme Court has interpreted the Uniform Criminal Extradition Act to limit judicial review of extraditions to four specific questions: (1) whether the extradition documents on their face are in order; (2) whether the petitioner has been charged with a crime in the demanding state; (3) whether the petitioner is the person named in the request for extradition; and (4) whether the petitioner is a fugitive. Michigan v. Doran, 439 U.S. 282, 288 (1978). Under Doran an individual's status as a juvenile is irrelevant. In re Robert, 406 A.2d at 268.

Consequently, most jurisdictions allow extradition of juveniles if they are charged with a crime in the demanding state. See Snyder v. State, 516 P.2d 700, 701 (Idaho 1973); Ex parte Jetter, 495 S.W.2d 925, 926-27 (Tex. Crim. App. 1973); see also Batton v. Griffin, 246 S.E.2d 667 (Ga. 1978); People v. Pardo, 265 N.E.2d 656 (Ill. 1979); People ex rel. Butts v. Morehead, 18 N.Y.S.2d 696 (N.Y. App. Div. 1940); Commonwealth ex rel. Reyes v. Aytch, 369 A.2d 1325 (Pa. Super. Ct. 1976); Burnham v. Hayward, 663 P.2d 65 (Utah 1983).

Other courts have held that a youth charged with juvenile delinquency is not charged with a crime, and thus cannot be extradited. People v. Smith, 440 N.Y.S.2d 837 (N.Y. Crim. Ct. 1981); People v. Butts, 14 N.Y.S.2d 19 (N.Y. App. Div. 1939); State in re Schreuder, 663 P.2d 19 (Utah 1982). Any questions concerning whether an adult court or a juvenile court has jurisdiction should be resolved in the demanding state, and not the sanctuary state. Ex parte Jetter, 495 S.W.2d 925 (Tex. Crim. App. 1973); Batton v. Griffin, 246 S.E.2d 667 (Ga. 1978). Thus, the soundest policy is to extradite any juvenile charged with a crime in another state, regardless of whether a juvenile court or an adult court has final jurisdiction.

THEREFORE, IT IS MY OPINION:

1. The Interstate Compact on Juveniles, as currently adopted in Montana at Title 41, chapter 6, MCA, does not apply to youths who have not been adjudged delinquent and have not run away, but who are charged with a felony offense in another state.
2. Juveniles residing in Montana, and charged with a crime in another state, may be extradited under the Uniform Criminal Extradition Act, Tit. 46, ch. 30, MCA.

Very truly yours,

MIKE GREELY
Attorney General