

Introduced: 1/14/76
Referred: Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 561

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Agreement on Detainers."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 33 is amended by adding a new chapter to read:

9 CHAPTER 35. AGREEMENT ON DETAINERS.

10 Sec. 33.35.010. AGREEMENT ENACTED. The Agreement on Detainers
11 is enacted into law and entered into by the State of Alaska with all
12 other jurisdictions legally joining in it in a form substantially as
13 follows:

14 THE AGREEMENT ON DETAINERS.

15 Article I

16 The party states find that charges outstanding against a prisoner,
17 detainers based on untried indictments, informations or complaints,
18 and difficulties in securing speedy trial of persons already incar-
19 cerated in other jurisdictions, produce uncertainties which obstruct
20 programs of prisoner treatment and rehabilitation. Accordingly, it is
21 the policy of the party states and the purpose of this agreement to
22 encourage the expeditious and orderly disposition of those charges and
23 determination of the proper status of any and all detainers based on
24 untried indictments, informations or complaints. The party states
25 also find that proceedings with reference to charges and detainers,
26 when emanating from another jurisdiction, cannot properly be had in
27 the absence of cooperative procedures. It is the further purpose of
28 this agreement to provide those cooperative procedures.

29 Article II

1 As used in this agreement, unless the context clearly requires
2 otherwise:

3 (1) "state" means a state of the United States, the United
4 States of America, a territory or possession of the United States, the
5 District of Columbia, the Commonwealth of Puerto Rico;

6 (2) "sending state" means a state in which a prisoner is
7 incarcerated at the time that he initiates a request for final dis-
8 position under Article III of this agreement or at the time that a
9 request for custody or availability is initiated under Article IV of
10 this agreement;

11 (3) "receiving state" means the state in which trial is to
12 be had on an indictment, information or complaint under Article III or
13 Article IV of this agreement.

14 Article III

15 (a) When a person is serving a term of imprisonment in a penal
16 or correctional institution of a party state, and when during the term
17 of imprisonment there is pending in another party state any untried
18 indictment, information or complaint on the basis of which a detainer
19 has been lodged against the prisoner, he shall be brought to trial
20 within 180 days after he has had delivered to the prosecuting officer
21 and the appropriate court of the prosecuting officer's jurisdiction
22 written notice of the place of his imprisonment and his request for a
23 final disposition to be made of the indictment, information or com-
24 plaint. However, for good cause shown in open court, the prisoner or
25 his counsel being present, the court having jurisdiction of the matter
26 may grant any necessary or reasonable continuance. The request of the
27 prisoner shall be accompanied by a certificate of the appropriate
28 official having custody of the prisoner, stating the term of commitment
29 under which the prisoner is being held, the time already served, the

1 time remaining to be served on the sentence, the amount of good time
2 earned, the time of parole eligibility of the prisoner, and any
3 decisions of the state parole agency relating to the prisoner.

4 (b) The written notice and request for final disposition refer-
5 red to in paragraph (a) of this article shall be given or sent by the
6 prisoner to the warden, commissioner of health and social services or
7 other official having custody of him, who shall promptly forward it
8 together with the certificate to the appropriate prosecuting official
9 and court by registered or certified mail, return receipt requested.

10 (c) The warden, commissioner of health and social services or
11 other official having custody of the prisoner shall promptly inform
12 him of the source and contents of any detainer against him, and shall
13 also inform him of his right to make a request for final disposition
14 of the indictment, information or complaint on which the detainer is
15 based.

16 (d) Any request for final disposition made by a prisoner under
17 paragraph (a) of this article shall operate as a request for final
18 disposition of all untried indictments, informations or complaints on
19 the basis of which detainers have been lodged against the prisoner
20 from the state to whose prosecuting official the request for final
21 disposition is specifically directed. The warden, commissioner of
22 health and social services or other official having custody of the
23 prisoner shall notify all appropriate prosecuting officers and courts
24 in the several jurisdictions within the state to which the prisoner's
25 request for final disposition is being sent of the proceeding being
26 initiated by the prisoner. Any notification sent under this paragraph
27 shall be accompanied by copies of the prisoner's written notice,
28 request, and the certificate. If trial is not had on any indictment,
29 information or complaint contemplated by this article before the

1 return of the prisoner to the original place of imprisonment, that
2 indictment, information or complaint is of no further force or effect,
3 and the court shall enter an order dismissing it with prejudice.

4 (e) A request for final disposition made by a prisoner under
5 paragraph (a) of this article shall also be considered a waiver of
6 extradition with respect to any charge or proceeding contemplated or
7 included by reason of paragraph (d) of this article, and a waiver of
8 extradition to the receiving state to serve any sentence imposed upon
9 him there, after completion of his term of imprisonment in the sending
10 state. The request for final disposition also constitutes a consent
11 by the prisoner to the production of his body in any court where his
12 presence may be required in order to effectuate the purposes of this
13 agreement and a further consent voluntarily to be returned to the
14 original place of imprisonment in accordance with the provisions of
15 this agreement. Nothing in this paragraph prevents the imposition of
16 a concurrent sentence if otherwise permitted by law.

17 (f) Escape from custody by the prisoner after the execution of
18 the request for final disposition referred to in paragraph (a) of this
19 article shall void the request.

20 Article IV

21 (a) The appropriate officer of the jurisdiction in which an
22 untried indictment, information or complaint is pending is entitled to
23 have a prisoner, against whom he has lodged a detainer and who is
24 serving a term of imprisonment in any party state, made available in
25 accordance with Article V(a) of this agreement upon presentation of a
26 written request for temporary custody or availability to the appropriate
27 authorities of the state in which the prisoner is incarcerated;
28 provided that the court having jurisdiction of an indictment, informa-
29 tion or complaint must have duly approved, recorded and transmitted

1 the request; and provided that there shall be a period of 30 days
2 after receipt by the appropriate authorities before the request is
3 honored, within which period the governor of the sending state may
4 disapprove the request for temporary custody or availability, either
5 upon his own motion or upon motion of the prisoner.

6 (b) Upon receipt of the officer's written request as provided in
7 paragraph (a) of this article, the appropriate authorities having the
8 prisoner in custody shall furnish the officer with a certificate
9 stating the term of commitment under which the prisoner is being held,
10 the time already served, the time remaining to be served on the
11 sentence, the amount of good time earned, the time of parole eligibility
12 of the prisoner, and any decisions of the state parole agency relating
13 to the prisoner. Those authorities shall at the same time furnish all
14 other officers and appropriate courts in the receiving state who have
15 lodged detainers against the prisoner with similar certificates and
16 with notices informing them of the request for custody or availability
17 and of the reasons for the request.

18 (c) In any proceeding under this article, trial shall begin
19 within 120 days of the arrival of the prisoner in the receiving state.
20 However, for good cause shown in open court, the prisoner or his
21 counsel being present, the court having jurisdiction of the matter may
22 grant any necessary or reasonable continuance.

23 (d) Nothing contained in this article may be construed to
24 deprive a prisoner of any right which he may have to contest the
25 legality of his delivery as provided in paragraph (a) of this article,
26 but his delivery may not be opposed or denied on the ground that the
27 executive authority of the sending state had not affirmatively con-
28 sented to or ordered the delivery.

29 (e) If trial is not had on any indictment, information or

1 complaint contemplated by this agreement before the prisoner's return
2 to his original place of imprisonment under Article V(e) of this
3 agreement, the indictment, information or complaint is not of any
4 further force or effect, and the court shall enter an order dismissing
5 it with prejudice.

6 Article V

7 (a) In response to a request made under Article III or Article
8 IV of this agreement, the appropriate authority in a sending state
9 shall offer to deliver temporary custody of a prisoner to the appro-
10 priate authority in the state where the indictment, information or
11 complaint is pending against the prisoner in order that speedy and
12 efficient prosecution may be had. If the request for final disposition
13 is made by the prisoner, the offer of temporary custody shall accompany
14 the written notice provided for in Article III of this agreement. In
15 the case of a federal prisoner, the appropriate authority in the
16 receiving state is entitled to temporary custody as provided by this
17 agreement or to the prisoner's presence in federal custody at the
18 place of trial, whichever custodial arrangement may be approved by the
19 custodian.

20 (b) The officer or other representative of a state accepting an
21 offer of temporary custody shall present the following upon demand:

22 (1) proper identification and evidence of this authority to
23 act for the state into whose temporary custody the prisoner is to be
24 given; and

25 (2) a certified copy of the indictment, information or
26 complaint on the basis of which the detainer has been lodged and on
27 the basis of which the request for temporary custody of the prisoner
28 has been made.

29 (c) If the appropriate authority refuses or fails to accept

1 temporary custody of the prisoner, or if an action on the indictment,
2 information or complaint, on the basis of which the detainer has been
3 lodged, is not brought to trial within the period provided in Article
4 III or Article IV of this agreement, the appropriate court of the
5 jurisdiction where the indictment, information or complaint has been
6 pending shall enter an order dismissing it with prejudice, and any
7 detainer based on it shall cease to be of any force or effect.

8 (d) The temporary custody referred to in this agreement is only
9 for the purpose of permitting prosecution on the charge or charges
10 contained in one or more untried indictments, informations or complaints
11 which form the basis of the detainer or for prosecution on any other
12 charge arising out of the same transaction. Except for his attendance
13 at court and while being transported to or from any place at which his
14 presence may be required, the prisoner shall be held in a suitable
15 jail or other facility regularly used for persons awaiting prosecution.

16 (e) At the earliest practicable time consistent with the purposes
17 of this agreement, the prisoner shall be returned to the sending
18 state.

19 (f) During the continuance of temporary custody or while the
20 prisoner is otherwise being made available for trial as required by
21 this agreement, time being served on the sentence shall continue to
22 run but good time shall be earned by the prisoner only if, and to the
23 extent that, the law and practice of the jurisdiction which imposed
24 the sentence may allow.

25 (g) For all purposes other than that for which temporary custody
26 as provided in this agreement is exercised, the prisoner shall be
27 considered to remain in the custody of and subject to the jurisdiction
28 of the sending state. Any escape from temporary custody may be dealt
29 with in the same manner as an escape from the original place of impri-

1 sonment or in any other manner permitted by law.

2 (h) From the time that a party state receives custody of a
3 prisoner under this agreement until the prisoner is returned to the
4 territory and custody of the sending state, the state in which the
5 untried indictments, informations or complaints are pending or in
6 which trial is being had shall be responsible for the prisoner and
7 shall also pay all costs of transporting, caring for, keeping and
8 returning the prisoner. The provisions of this paragraph govern
9 unless the states concerned have entered into a supplementary agreement
10 providing for a different allocation of costs and responsibilities
11 between themselves. Nothing in this agreement may be considered to
12 alter or affect any internal relationship among the departments,
13 agencies and officers of and in the government of a party state, or
14 between a party state and its subdivisions, as to the payment of or
15 the responsibility for costs.

16 Article VI

17 (a) In determining the duration and expiration dates of the time
18 periods provided in Articles III and IV of this agreement, the running
19 of those time periods shall be tolled when and for as long as the
20 prisoner is unable to stand trial, as determined by the court having
21 jurisdiction of the matter.

22 (b) No provision of this agreement, and no remedy made available
23 by this agreement, apply to a person who is adjudged to be mentally
24 ill.

25 Article VII

26 Each state party to this agreement shall designate an officer
27 who, acting jointly with like officers of other party states, shall
28 adopt regulations to carry out the terms and provisions of this agree-
29 ment, and who shall provide, inside and outside the state, information

1 necessary to the effective operation of this agreement.

2 Article VIII

3 This agreement shall enter into full force and effect as to a
4 party state when that state has enacted it into law. A state party to
5 this agreement may withdraw from it by enacting a statute repealing
6 it. However, the withdrawal of any state does not affect the status
7 of any proceedings already initiated by inmates or by state officers
8 at the time the withdrawal takes effect, nor does it affect their
9 rights in respect to those proceedings.

10 Article IX

11 This agreement shall be liberally construed so as to effectuate
12 its purposes. The provisions of this agreement shall be severable and
13 if any phrase, clause, sentence or provision of this agreement is
14 declared to be contrary to the constitution of any party state or of
15 the United States or the applicability of a provision to any govern-
16 ment, agency, person or circumstance is held invalid, the validity of
17 the remainder of this agreement and the applicability of it to any
18 government, agency, person or circumstance are not affected. If this
19 agreement is held to be contrary to the constitution of any party
20 state, the agreement shall remain in full force and effect as to the
21 remaining states and in full force and effect as to the state affected
22 as to all severable matters.

23 Sec. 33.35.020. APPROPRIATE COURT DEFINED. The phrase "appro-
24 priate court" as used in the Agreement on Detainers in sec. 10 of this
25 chapter, with reference to the courts of this state, means the superior
26 court.

27 Sec. 33.35.030. ENFORCEMENT. All courts, departments, agencies,
28 officers and employees of the state and its political subdivisions
29 shall enforce the Agreement on Detainers under sec. 10 of this chapter

1 and cooperate with one another and with other party states in en-
2 forcing the agreement and effectuating its purpose.

3 Sec. 33.35.040. APPLICATION OF AS 12.55.050. Nothing in this
4 chapter or in the Agreement on Detainers under sec. 10 of this chapter
5 may be construed to require the application of AS 12.55.050 to a
6 person because of a conviction had in a proceeding brought to final
7 disposition by reason of the use of the Agreement on Detainers.

8 Sec. 33.35.050. SURRENDER OF INMATE REQUIRED BY AGREEMENT. The
9 warden or other official in charge of a penal or correctional institu-
10 tion in this state shall give over the person of any inmate of the
11 institution whenever required by the operation of the Agreement on
12 Detainers under sec. 10 of this chapter.

13 Sec. 33.35.060. CENTRAL ADMINISTRATOR AND INFORMATION AGENT.
14 The commissioner of health and social services or his designee shall
15 be the central administrator of and information agent for the Agreement
16 on Detainers under sec. 10 of this chapter.

17 * Sec. 2. AS 11.30 is amended by adding a new section to read:

18 Sec. 11.30.095. ESCAPE FROM CUSTODY UNDER AGREEMENT ON DETAINERS.
19 A person confined in a state jail, prison or other penal institution,
20 who has been lawfully delivered into the temporary custody of appro-
21 priate officers of a state which is party to the Agreement on Detainers
22 (AS 33.35.010) for trial on a charge or detainer based on an untried
23 indictment, information or complaint and who escapes or attempts to
24 escape from custody, is punishable by imprisonment for not less than
25 one year nor more than ten years.
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