

Introduced: 1/29/81
Referred: Judiciary

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 115 am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Agreement on Detainers; and
7 providing for an effective date."

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

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

10 CHAPTER 35. AGREEMENT ON DETAINERS.

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

15 THE AGREEMENT ON DETAINERS.

16 Article I

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

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Article II

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

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

(2) "sending state" means a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition under Article III of this agreement or at the time that a request for custody or availability is initiated under Article IV of this agreement;

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

Article III

(a) When a person is serving a term of imprisonment in a penal or correctional institution of a party state, and when during the term of imprisonment there is pending in another party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he has had delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint. However, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment

1 under which the prisoner is being held, the time already served, the
2 time remaining to be served on the sentence, the amount of good time
3 earned, the time of parole eligibility of the prisoner, and any deci-
4 sions of the state parole agency relating to the prisoner.

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

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

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

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

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

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

21 Article IV

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

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

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

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

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

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

7 Article V

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

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

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

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

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

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

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

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

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

1 with in the same manner as an escape from the original place of impri-
2 sonment or in any other manner permitted by law.

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

17 ARTICLE VI

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

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

26 ARTICLE VII

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

1 ment, and who shall provide, inside and outside the state, information
2 necessary to the effective operation of this agreement.

3 **Article VIII**

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

11 **ARTICLE IX**

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

24 Sec. 33.35.020. "APPROPRIATE COURT" DEFINED. The phrase "appro-
25 priate court" in AS 33.35.010, with reference to the courts of this
26 state, means the superior 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 AS 33.35.010 and cooper-

1 ate with one another and with other party states in enforcing the
2 agreement and effectuating its purpose.

3 Sec. 33.35.040. CENTRAL ADMINISTRATOR AND INFORMATION AGENT. The
4 commissioner of health and social services or his designee is the
5 central administrator of and information agent for the Agreement on
6 Detainers under AS 33.35.010.

7 * Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-
8 070(c).