

BASIC CONCEPTS OF THE INTERSTATE AGREEMENT ON DETAINERS
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- I. Overview of the Interstate Agreement on Detainers
 - a. K.S.A. § 22-4401, et seq.
 - i. Originally enacted in 1969
 - ii. Most recent legislative update was in 1992
 - b. Article I
 - i. The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation.
 - ii. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints.
 - iii. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.
 - c. The purpose of the IAD is to encourage the orderly and expeditious disposition of detainers based on untried indictments, informations or complaints in an effort to reduce uncertainty and facilitate prisoner treatment and rehabilitation in the state where the prisoner is incarcerated.
 - i. Sweat v. Darr, 235 Kan. 570, 684 P.2d 347 (1984)
 - d. The IAD has been adopted by all U.S. States and territories, except for Louisiana and Mississippi
 - i. If disposition of detainer is needed there, either an executive agreement or a writ of habeas corpus ad prosequendum must be used
 - ii. Because both Louisiana and Mississippi are not IAD signatory states, IAD provisions and penalties do not apply

- e. Definitions
 - i. Sending State
 - 1. Where the defendant is currently incarcerated and serving a sentence of imprisonment
 - ii. Receiving State
 - 1. The State where the defendant has untried charges
 - iii. Detainer
 - 1. A request or notice filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent
 - iv. Anti-Shuttling
 - 1. The provision of the IAD forbidding a second transfer of custody to the receiving state because trial was not held or completed during the first transfer.

II. Requirements Triggering the IAD

- a. Defendant has untried charges in the receiving state
 - i. Does not apply for detainers for unresolved probation violations, parole violations or persons under pre-trial detention in the sending state
 - 1. State v. Hargrove, 273 Kan. 314, 45 P.3d 376 (2002), cert denied 537 U.S. 982 (2002)
- b. Defendant is incarcerated and serving a sentence of imprisonment in the sending state on separate charges
 - i. If Defendant is released from incarceration, IAD provisions cease to apply
 - 1. State v. Julian, 244 Kan. 101, 765 P.2d 1104 (Kan. 1988)
- c. Defendant has a detainer lodged in the sending state the receiving state
 - i. Some courts have held formal notice is required, but most say any written notice is sufficient
- d. Penal or Correctional Institution
 - i. Article III states “[w]henever a person has entered upon a term of imprisonment in a *penal or correctional institution of a party state*, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information

- or complaint on the basis of which a detainer has been lodged against the prisoner” the prisoner can invoke the IAD
- ii. There are no Kansas cases directly on point as to whether a county jail meets the definition of a “penal or correctional institution”
 - iii. Prior to 2016, the Kansas Supreme Court held that a prisoner serving a sentence in a county jail did qualify for disposition of detainer under the Uniform Mandatory Disposition of Detainers Act (“UMDDA”)
 1. State v. Burnett, 297 Kan. 447, Syl. ¶5, 301 P.3d 698 (2013).
 - iv. However, in 2016, the Kansas Legislature amended the UMDDA to specifically exclude county jails as qualifying facilities under the UMDDA
 - v. However, the IAD language, on which the UMDDA is based, has not changed and there is a split of authority nationwide about whether being incarcerated in a county jail can trigger the IAD
 - vi. It is the Governor’s position, in addition to her three predecessors, that county jails do qualify for IAD purposes

III. Prisoner Initiated Disposition of Detainer

a. Article III

- i. Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other 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 one hundred and eighty (180) days after he shall have caused to be 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[.]
- b. Substantial compliance with the IAD is required before a prisoner can invoke its protections
 - i. Sweat v. Darr, 235 Kan. 570, 684 P.2d 347 (1984)
 - c. A prisoner may not invoke the strict 180-day limitation of either detainers act if they sends their motion to the wrong court, or serves the prosecutor but fails to send a copy to the court, or files in the proper court but fails to serve the prosecutor.
 - i. Elkins v. Darr, 217 Kan. 817, 539 P.2d 16 (1975)

- d. The term “substantial compliance” is not well defined and is fact specific
 - i. Substantial compliance has been found when there is misfeasance or malfeasance of prison officials
 - 1. State v. Burnett, 297 Kan. 447, 301 P.3d 698 (2013)
 - ii. Substantial compliance has not been found when there is no showing of prison officials’ malfeasance or misfeasance in mistakenly addressing a request, which task was not their responsibility
 - 1. Sweat v. Darr, 235 Kan. 570, 684 P.2d 347 (1984)
 - iii. It is the prisoner’s duty to ensure accuracy of address information and instruct prison officials correctly perform their obligations and without proof of wrongdoing, delay in sending may not be grounds for relief
 - 1. State v. Griffin, 312 Kan. 716, 479 P.3d 937 (2021)
- e. Multiple detainers
 - i. A prisoner who seeks disposition of detainer under Article III is requesting disposition of all detainers lodged by the receiving state
 - ii. The warden is required to notify all Kansas jurisdictions in which there is an outstanding detainer for the prisoner
 - iii. If a different Kansas county has a detainer, and is properly notified, the clock may be running in multiple counties
 - 1. There may be an argument that if one county has the prisoner first, speedy trial in the second county may be tolled because the defendant is unavailable to stand trial
 - 2. This is a tricky argument that has not been squarely addressed in Kansas under the IAD
 - 3. The UMDDA has specific statutory language on how multiple detainers should be handled. The IAD does not.
 - 4. When in doubt, obtain a continuance for good cause shown
- f. Required forms
 - i. Form I
 - 1. The warden informs the prisoner of the pending charges
 - ii. Form II
 - 1. The prisoner requests disposition of charges
 - 2. This form must be supplied by the sending state correctional facility at the prisoner’s request
 - iii. Forms III & IV

1. The warden certifies that the inmate is in their custody and offers to cede custody temporarily to the receiving state for disposition of the detainer
 2. These forms, along with Form II, are sent *by the warden, not the inmate*, by certified mail, return receipt requested to the prosecutor and appropriate court where the detainer originates
 3. Once received by the prosecutor and appropriate court of the prosecutor's jurisdiction, the 180-day speedy trial clock starts to run
- iv. Forms VI & VII
1. These forms are completed by the receiving state prosecutor accepting temporary custody and designating an agent for transport
 2. These forms are sent by the receiving state prosecutor to the Kansas detainer administrator
 - a. Rhonda D. Arnold, Kansas Governor's Office
300 SW 10th Ave, Room 259-S
Topeka, KS 66612
- v. Form VI
1. Completed by the Kansas detainer administrator. Copies are sent to the sending state warden, KDCO accounting office, and 2 copies forwarded back to the Kansas prosecutor
- vi. Form IX
1. Completed by the Kansas prosecutor following sentencing in the Kansas case
 2. Sent to the Kansas detainer administrator
- g. Speedy trial
- i. 180 days from receipt of Forms II, III, & IV by the prosecutor and appropriate court
 - ii. 180 days is running regardless of where the case is procedurally
 1. If the case has not yet been to preliminary hearing, it does not matter
 2. Speedy trial is running
 - iii. Delays
 1. Delays granted for good cause shown do not count against the 180-day speedy trial limitation

- a. State v. Waldrup, 46 Kan.App.2d 656, 263 P.3d 867 (2011), rev. denied Feb. 13, 2020.
2. Delays requested by the prosecution can stop the clock, *so long as*:
 - a. The court finds on the record that the continuance is granted for good cause shown; and,
 - b. The defendant's Due Process rights are protected
 - i. In this situation, Due Process is simply notice and opportunity to be heard
 - ii. A defendant's physical presence is not required if the defendant is represented by counsel and counsel is present to be heard on the State's request
 1. State v. Waldrup, 46 Kan.App.2d 656, 673, 263 P.3d 867 (2011), rev. denied Feb. 13, 2020.
3. Hold in another jurisdiction
 - a. When prisoner becomes unavailable for trial as a result of having requested speedy trial in another jurisdiction, delay in bringing prisoner to trial in Kansas attributable to his having been in custody of such other jurisdiction is chargeable to prisoner in determining his speedy trial rights under Agreement on Detainers.
 - i. State v. Rodriguez, 261 Kan. 1, 927 P.2d 463 (1996)
- iv. Waiver
 1. A plea of guilty waives speedy trial under the IAD
 - a. State v. Rodriguez, 261 Kan. 1, 927 P.2d 463 (1996)
 - b. Steward v. Sheriff of Leavenworth County, 5 Kna.App.2d 593, 620 P.2d 652 (1980)

IV. Prosecution Initiated Disposition of Detainer

a. Article IV

- i. The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated:
- ii. Provided, That the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request:
- iii. And provided further, That there shall be a period of thirty (30) days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

b. Once the prisoner returns to Kansas, they must be tried within 120 days of arrival

i. Article IV(d)

c. Procedures

- i. Confirm detainer has been lodged in the sending state and that the prisoner has been notified
- ii. Form V
 1. Completed by the prosecutor
 2. Must be accompanied by:
 - a. Certified copies of the complaint, information or indictment
 - b. Outstanding KS arrest warrant
 - c. Identification documents
 - i. Fingerprints, photos, photo affidavit, etc.
 3. Form V must be signed by the prosecutor and a judge
- iii. Copies of Form V must be sent to the Kansas detainer administrator
 1. The detainer administrator will send copies to the sending state detainer administrator, sending state warden, and the prisoner

2. Within 30 days of receipt, the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner
 - a. Article IV(a)
- iv. Transfer hearing
 1. Will be held in the sending state
 2. Similar to an extradition hearing
 3. Prisoner is entitled to counsel
- v. Defenses to transfer
 1. May be challenged in a habeas corpus proceeding
 2. What may be challenged
 - a. Identity
 - b. Whether the prisoner is actually charged in the receiving state
 - c. Whether the paperwork is in order
 3. Presumptions of regularity, burdens of proof, and rules of evidence are the same as in extradition proceedings

V. Role of the Governor

- a. All IAD request go through and are registered through the Governor's Office
 - i. Only prosecution initiated IAD requests permit the Governor to disapprove an IAD request
 - ii. The Kansas AG's Office has no formal or statutory role in review or decisions regarding IAD applications
- b. Nevada
 - i. The State of Nevada requires the Agreement Administrator of the requesting State to include an additional acknowledgement in the Form V indicating the Governor participates in the request for temporary custody.
 - ii. Nevada requires this due to a Nevada Supreme Court ruling, State v. Blum, 98 Nev. 40, 639 P.2d 559 (1982).
- c. Speedy trial
 - i. Prisoner must be brought to trial within 120 days of arrival in Kansas
 - ii. The same provisions permitting for extensions of time for "good cause shown" apply for prosecution initiated IAD cases
 1. Article IV(d)

- VI. Anti-Shuttling
 - a. Anti-Shuttling applies to both Article III and Article IV transfers
 - b. Because the IAD's intent is for efficient resolution of outstanding cases, once a prisoner is transferred to Kansas, they should not be sent back to the sending state until their outstanding detainers are resolved
 - c. If a prisoner is returned to the sending state prior to resolution of their Kansas case, the IAD views the return as the prosecution's disinterest in proceeding and the case must be dismissed with prejudice
 - d. The United States Supreme Court has held even minor or de minimis violations of anti-shuttling prohibitions requires dismissal
 - i. Alabama v. Bozeman, 533 U.S. 146 (2001)

- VII. Situations where the IAD should not be used
 - a. Prisoner's who are adjudged to be mentally ill
 - i. Article VI(b)
 - b. Death penalty cases
 - i. Article V(e)
 - c. Early parole dates
 - i. Release from custody eliminates the applicability of the IAD
 - d. Non-IAD cases
 - i. Tried but unsentenced prisoners
 - ii. Probation violators
 - iii. Parole violators

All IAD forms and additional extradition and detainer information may be found on the Kansas Attorney General's website under prosecution resources.

<https://www.ag.ks.gov/public-safety/prosecutor-resources>