

CHAPTER 834
AGREEMENT ON DETAINERS

Section

- 834-1 Agreement adopted
- 834-2 Definition
- 834-3 Cooperation by agencies
- 834-4 Escape
- 834-5 Release of inmate
- 834-6 Administrator

" **§834-1 Agreement adopted.** The Agreement on Detainers is hereby enacted into law and entered into by this State with all other jurisdictions legally joining therein substantially as follows:

"The contracting States solemnly agree that:

Article 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. 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. 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.

Article II

As used in this agreement:

(a) "State" shall mean 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.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that the prisoner initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

Article III

(a) 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, the prisoner shall be brought to trial within one hundred eighty (180) days after the prisoner 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 the prisoner's imprisonment and the prisoner's request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or the prisoner's 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 under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the superintendent, administrator of corrections or other official having custody of the prisoner, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The superintendent, administrator of corrections or other official having custody of the prisoner shall promptly inform the prisoner of the source and contents of any detainer lodged against the prisoner and shall also inform the prisoner of the prisoner's right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The superintendent, administrator of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint

contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon the prisoner, after completion of the prisoner's term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of the prisoner's body in any court where the prisoner's presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to the prisoner's execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV

(a) 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 the officer 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; provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; 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 the governor's own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time

remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty (120) days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or the prisoner's counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which the prisoner may have to contest the legality of the prisoner's delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

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

- (1) Proper identification and evidence of the officer's or representative's authority to act for the state into whose temporary custody the prisoner is to be given.
- (2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

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

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

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

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is

returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI

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

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

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters". [L 1965, c 160, §1; Supp, §250A-1; HRS §714-1; ren L 1972, c 9, pt of §1; gen ch 1993]

Case Notes

Dismissal of an indictment not an available form of relief where the notice requirement of Interstate Agreement on Detainers Act is violated, even when that violation is attributable to the receiving state, the United States. 280 F.3d 1260 (2002).

Re "due process" requirements for out-of-state transfers of prisoners. 387 F. Supp. 912 (1975); 396 F. Supp. 196 (1975).

Article VI tolling provision phrase "unable to stand trial" includes all periods of delay occasioned by defendant, including delays attributable to motions filed on defendant's behalf. 81 H. 123, 913 P.2d 49 (1996).

Neither Article III nor Article IV violated where fifty-eight days had tolled because defendant, pursuant to Article VI, was "unable to stand trial" during pendency of defendant's motion to dismiss. 81 H. 123, 913 P.2d 49 (1996).

Defendant's right to speedy trial under this Agreement not violated where periods of delay that defendant was responsible for tolled 120-day period mandated by Article IV and brought trial commencement date within mandated period. 83 H. 496 (App.), 927 P.2d 1379 (1996).

Good cause did not exist under Agreement for continuance of trial where, despite defendant's persistent efforts to be tried within time limits and earlier trial date could have been assigned, motions court took "rather relaxed approach" in scheduling commencement of trial. 83 H. 496 (App.), 927 P.2d 1379 (1996).

Once time period within which defendant was required to be tried under this Agreement had lapsed, trial court lacked authority to retroactively grant continuance of defendant's trial. 83 H. 496 (App.), 927 P.2d 1379 (1996).

Where State was first to invoke provisions of this Agreement, defendant's right to a speedy trial under this Agreement was governed by Article IV, not Article III. 83 H. 496 (App.), 927 P.2d 1379 (1996).

After excluding forty days that defendant was unable to stand trial due to motions and continuances occasioned by defendant, trial court properly held defendant was brought to trial within 180-day speedy trial provision of this Agreement. 84 H. 191 (App.), 932 P.2d 328 (1997).

One hundred eighty-day time period for speedy trial under Article III(a) begins to run when prisoner's request for final disposition is actually delivered to prosecuting officer and court of receiving state, not when prisoner files request; no trial court error. 84 H. 191 (App.), 932 P.2d 328 (1997).

When a court grants a continuance for good cause in open court with defendant or defendant's counsel present as required under Article III(a), this Agreement does not require court to render formal determination that the speedy trial provision is tolled under Article VI(a). 84 H. 191 (App.), 932 P.2d 328 (1997).

Where defendant did not object to setting of trial date past the 180-day period required under this Agreement until after time period had run, defendant waived objection to this speedy trial provision. 84 H. 191 (App.), 932 P.2d 328 (1997).

" **§834-2 Definition.** The phrase "appropriate court" as used in the Agreement on Detainers shall, with reference to the courts of this State, mean the supreme court and the circuit courts. [L 1965, c 160, §2; Supp, §250A-2; HRS §714-2; ren L 1972, c 9, pt of §1]

" **§834-3 Cooperation by agencies.** All courts, departments, agencies, officers, and employees of this State and its political subdivisions are hereby directed to enforce the Agreement on Detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose. [L 1965, c 160, §3; Supp, §250A-3; HRS §714-3; ren L 1972, c 9, pt of §1]

" **§834-4 Escape.** Any person who escapes from lawful custody in another state while being held pursuant to the Agreement on Detainers may be charged with escape under chapter 740 and sentenced to a term of imprisonment not to exceed three years.

[L 1965, c 160, §4; Supp, §250A-4; HRS §714-4; ren L 1972, c 9, pt of §1]

Note

Chapter 740 referred to in text is repealed. For present provisions relating to escape, see §§710-1020, 710-1021.

" **§834-5 Release of inmate.** The superintendent or other official in charge of a penal or correctional institution in this State shall give over the person of any inmate thereof whenever so required by the operation of the Agreement on Detainers. [L 1965, c 160, §5; Supp, §250A-5; HRS §714-5; ren L 1972, c 9, pt of §1]

" **§834-6 Administrator.** The lieutenant governor shall be the officer who shall serve as central administrator and information agent for the Agreement on Detainers. [L 1965, c 160, §6; Supp, §250A-6; HRS §714-6; ren L 1972, c 9, pt of §1]