LEGAL BULLETIN 9.2

Detainers

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Detainers

The term "detainer" is used in a number of different ways depending upon the area of law under consideration. For the purpose of this bulletin a "detainer" is a written request sent to the warden of a penal institution to inform him of pending charges in another jurisdiction against an inmate in his custody.

A detainer is placed in order to hold (detain) an incarcerated individual in custody. The lodging of a detainer will prevent a prisoner from being released until the detainer is lifted or until the jurisdiction that issued it disposes of the legal matter that occasioned the detainer. Thus, detainers are used to ensure that a prisoner will serve a sentence or attend a trial in a different jurisdiction at the completion of the current sentence, which he is serving in a state or federal institution.

This bulletin will provide a brief overview of the law relating to detainers. You should use the information provided in this bulletin as a starting point for your own research. This bulletin is not intended to cover every possible circumstance that might be involved with detainer issues. Additionally, as in every area of law, there are ongoing judicial decisions and changes to statutes, which must be accounted for in your research.

Prisoners are usually faced with three common types of detainers:

1. Detainer based on a parole or probation violation.
2. Detainer based on an outstanding sentence.
3. Detainer based on an outstanding pending charge.

The four (4) most common methods of dealing with detainer issues are discussed below:

1. The strategy of inaction by an inmate:

As a general rule, inaction is seldom advisable when confronting a legal problem. However, there are situations with respect to detainers that may be best approached by doing nothing. An important consideration in deciding if inaction is the best strategy relates to the possible response of the prosecutor. The prosecutor in the jurisdiction that lodged the detainer, may follow through on the detainer and have the inmate transferred to his or her jurisdiction for legal action or they might:

a) Decide to dismiss the charges because the prisoner is already serving a lengthy prison sentence.
b) Make a determination that the cost of transporting the accused to trial will cause more difficulty and expense than a possible new conviction is worth.
c) Calculate that the accused has a good probability of avoiding prosecution on the underlying charges on speedy trial grounds.

A situation where inaction might not be advisable is when the inmate has a good chance of having the sentence on the detainer case run concurrent (at the same time) as the sentence that he is presently serving. See Fox v. Michigan, 122 L. Ed. 2d 406, 113 S.Ct.1085 (1993). Keep in mind that entry of a valid guilty plea will be considered a waiver of rights to challenge any violation of the Interstate Agreement on Detainers.

2. Challenging the detainer on speedy trial grounds:

The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution, state constitutions, federal law and state law. A note of caution is in order here: the term "speedy trial" is not precisely defined and can only be understood by examining a number of criteria. It is entirely possible to have two cases that have the same exact amount of time between indictment, information, or complaint and trial in two jurisdictions and have one dismissed on speedy trial grounds and the other not dismissed. The criteria (factors) that a court will examine in assessing a constitutional challenge to a prosecution on speedy trial grounds include:

1. The length of the delay.
2. The reason for the delay.
3. The assertion or failure to assert, right to a speedy trial by the defendant.
4. The presence or absence of prejudice or injury to the prisoner due to the delay.

The court will also consider whether the prosecution acted in bad faith, allowed inordinate neglect, or caused the delay by unjustifiable willful and deliberate conduct to gain some procedural advantage.

The right to a speedy trial is guaranteed by the Sixth Amendment to the Constitution. This is a fundamental right and is imposed upon the states by the Due Process Clause of the Fourteenth Amendment of the Constitution. See Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed 2d 101 (1972).

In Trigg v. Tennessee, 507 F. 2d 949 (6th Cir. 1974) the court refused to dismiss a detainer against a prisoner after a period of four years had elapsed because the inmate had not demonstrated sufficient prejudice to his criminal defense. He had also failed to prove that his conditions of confinement as a federal prisoner were detrimental to obtaining relief.

In Prince v. Alabama, 507 F. 2d 693 (5th Cir. 1975), the court released an Alabama prisoner who had been deprived of his speedy trial right by the delay in his extradition from California for approximately eight years. The court reasoned that the prisoner had been prejudiced during the period of pre-trial delay because the Alabama detainer warrant prevented the prisoner from obtaining favorable work-release and parole programs in California.

When courts using the above factors consider prejudice to the defendant they will examine such issues as: the harmful effect of pretrial publicity; oppressive pretrial incarceration; anxiety and concern of the accused. However, the kind of prejudice that has much more often resulted in dismissal relates to harm to the defendant's ability to prepare and present his or her case, such as the loss of strong exculpatory evidence, the death of an alibi witness, etc.

Delay between the filing of an indictment and the date of the offenses will not serve as grounds for dismissal if the indictment comes within the time allowed by the statute of limitations applicable to the offense. However, if serious prosecutorial misconduct that results in significant prejudice to the defendant can be proven the court may provide some remedy.

Delays that are the result of crowded court dockets or other non-fault reasons will usually carry little weight toward dismissal. Any time periods that passed because of continuances requested by the defense, or time allowed for defense motions are not added to the total time calculation for speedy trial purposes. Additionally, time that is attributable to the defendant being unavailable because he was a fugitive from justice will not be calculated as delay time against the prosecution. For example, if your attorney gets a thirty-day continuance from the court, this will extend the time to begin your trial beyond the 180 days under the Interstate Agreement on Detainers to 210 days.

In some instances prisoners may be granted credit for time served to compensate for illegal or improper detention. Under 18 USC §3568 a person may request time credit for the period of incarceration attributable to the federal warrant. See Brown v. U.S., 489 F.2d 1036 (8th Cir. 1974) and Savage v. Henderson, 475 F. 2d 78 (5th Cir. 1973).

Under Article IV(c) of the Interstate Agreement on Detainers, trial is to commence within 120 days of an inmate's arrival in the detainer lodging state. The Supreme Court has held that a habeas corpus review of this issue is not to be under a Sixth Amendment (fundamental rights analysis) guarantee to a speedy trial if there is no constitutional violation of the right to a speedy trial. Reed v. Farley, 129 L Ed. 2d 277, 114 S. Ct. 2291 (1994).

3. Use of the Interstate Agreement on Detainers:

Unlike the inexact treatment of time periods found in Sixth Amendment analysis, the jurisdiction that lodged the detainer must meet the specific time period requirements of the Interstate Agreement on Detainers. The Federal Government, 48

states and District of Columbia have adopted the Interstate Agreement on Detainers (IAD).

The IAD requires that the warden of an institution where a prisoner is housed provide the inmate with prompt notice if a detainer is lodged against him. After the inmate has been given notice he is to be brought to trial within one hundred and eighty (180) days of receipt of notice unless the court for good cause grants a continuance. See United States v. Espinoza, 841 F.2d 326 (9th Cir. Cal. 1988) The time only begins to run when the prosecutor and court receive the notice, not when the inmate sends it out. Fox v. Michigan, 122 L.Ed 2d 406, 113 S Ct. 1085 (1993).

When the prisoner receives the notice of detainer, he has two options under the IAD. He can either request a final disposition of the charges underlying the detainer (Article III) or wait and see if the prosecutor requests final disposition (Article IV).

When an inmate sends the proper written request for disposition to the prosecution and the court that has jurisdiction of the detainer case, trial must be held within 180 days. Failure to commence trial will result in the dismissal of the detainer warrant. See: Graham v. Commonwealth of Pennsylvania, 368 F. Supp. 846 (W.D. Pa. 1973).

For example, reversal of conviction resulted in one case because a federal warden and state prosecutors failed to follow up on a demand under the provisions of the IAD by a federal prisoner to dispose of the charges that were the basis of the detainer lodged against him. The court determined that the prisoner had been prejudiced by the loss of any opportunity to serve the state sentences, if any, concurrently with his federal sentences. State v. Angelone, 67 Wash App 555, 837 P2d 656 (1992).

Be sure to reference the charges and case number(s) in your request. Date and sign your notice. Indicate specifically, that you are exercising your rights under the IAD. Like any other legal matter, it is very important that you keep copies of all papers and documents. If possible, get proof that notice was delivered (certified or registered mail, receiving party return receipt, etc.). Make a habit of sending copies of everything you make or receive to family or a trusted friend.

If the inmate waits and lets the prosecutor request final disposition, the inmate has the right to request a pre-transfer hearing. The right to request a hearing does not apply when a prisoner requests final disposition under Article III. The method of challenging the legality of a transfer is with a writ of habeas corpus. To file the writ you must first exhaust your remedies by seeking administrative remedies and/or court challenges, depending upon your status and jurisdiction. State prisoners will file under 28 USC § 2254; federal prisoners under 28 USC § 2255.

For an inmate to be considered as serving “a term of imprisonment” under the IAD, he must be serving a sentence. Thus, pre-trial detainees are not entitled to the protections of the Act. Another similar situation that does not provide IAD protections, is when a

prisoner is in custody awaiting a decision on a probation revocation and not serving the actual sentence.

The IAD was not intended to cover transfer of a federal prisoner from one federal district to another. United States v. Stoner, 799 F2d 1253 (9th Cir. Cal. 1986). There are a number of cases that deal with the failure to prosecute a prisoner who is then sent back to the jurisdiction that he was in previously. Some have resulted in dismissal of the charges. There are many situations that are covered under these types of cases. We will not attempt to list them all here. However, we would direct your attention to the issues of prejudice and requirements of the IAD as a starting point in your analysis of these questions.

Note: A writ of habeas corpus ad prosequendum does not constitute a detainer within the meaning of the IAD.

4. Negotiation with the prosecutor:

The same prosecutor that lodged the detainer has the authority to lift it. Prosecutors will not usually be receptive to negotiating directly with inmates, although there have been some exceptions. The best way to approach this method is to secure the services of an attorney experienced in these issues. The following factors will be considered in the negotiation process:

1. The seriousness of the charges underlying the detainer. Obviously, the more serious the charges, the more difficult it is to gain a favorable result through negotiation.
2. The length of the sentence that you are serving. If you have many more years of incarceration ahead of you this may cause the prosecutor to reconsider the merits of proceeding against you on the detainer charge.
3. Is the detainer having an adverse impact on the inmate's conditions of confinement? The adverse impact may include inability to gain work-release status, more restrictive housing placement, unavailability of certain programs, denial of parole etc.
4. The inmate's prior record and behavior while incarcerated.
5. The distance between the demanding jurisdiction and the prisoner's current institutional placement. (Cost of transport, staff requirements to accomplish the transfer, etc.)
6. The prisoner's willingness and ability to make restitution.
7. The strength of the case against the prisoner.

Review the above list and prepare a brief overview of how your situation matches up. The above list is not based upon court rules or case law. Rather it contains issues that a prosecutor may consider. It remains his or her authority and decision to give whatever weight they deem appropriate to any of the factors. You may believe that you have a favorable situation in relation to all of the factors and find that he prosecutor is still unwilling to negotiate. On the other hand, you may have only one factor in your favor and find that the prosecutor will lift the detainer based upon it.

The Interstate Agreement on Detainers (18 USCS Appx.) is made up of a number of articles designed to provide an efficient and uniform method for dealing with detainers involving jurisdictions of states. We have provided portions of the IAD below for reference. The full text should be available in your law library.

Article III

(a) Whenever a person has entered upon a term of under the provisions of the IAD § 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 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 his place of imprisonment and his 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 his counsel being present, the court having jurisdiction of the matter may grant any necessary continuance.

(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 warden, commissioner of corrections, or other official having custody of him, 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 warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his 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 warden, commissioner 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.

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 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 if the State in which the prisoner is incarcerated. . .

(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State, but 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.

(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 confinement pursuant to article V(e) hereof, each 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

(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 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.