



# **2021 Kansas Extradition & Interstate Detainer Manual**



State of Kansas  
Laura Kelly, Governor  
Kris W. Kobach, Attorney General

# 2021 Kansas Extradition and Interstate Detainer Manual

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The Office of the Governor of Kansas and the Office of the Kansas Attorney General wish to acknowledge the National Association of Extradition Officials, the Secretary of the Commonwealth of Virginia, former Assistant Kansas Attorney General Lyndzie M. Carter, and Legal Intern Stephanie Plaschka for their contributions to this manual.

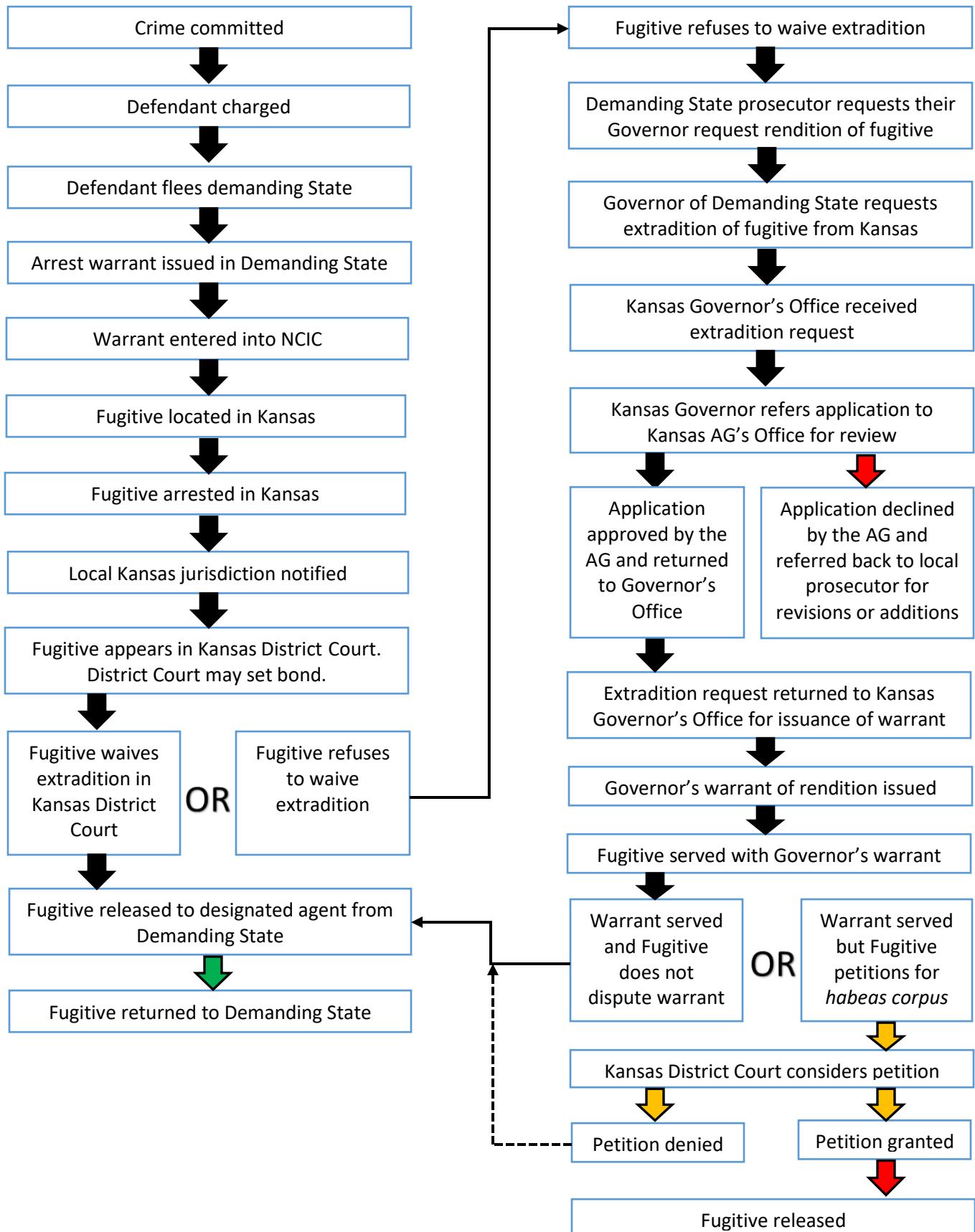
## TABLE OF CONTENTS

Extradition Overview Charts .....	5
Fundamentals of Extradition .....	7
Arrest .....	7
Waiver and Arraignment .....	9
Application for Requisition .....	11
Demanding State Governor's Requisition .....	15
Asylum State Governor's Warrant of Rendition .....	15
Service of Governor's Warrant of Rendition .....	15
Arraignment on Governor's Warrant of Rendition .....	16
Bail .....	16
Habeas Corpus .....	16
Rendition .....	17
Noncompliance Penalties .....	18
Costs .....	18
UCEA Statute Reference Table .....	19
Time Limitation Reference Table .....	21
UIFSA Statute Reference Table .....	23
Special Requirements in Other States .....	25
Interstate Agreement on Detainers .....	29
Introduction .....	29
Prerequisites to Application of IAD .....	30
Procedure .....	34
Prisoner Request .....	34
Prosecutor Request .....	37
Trial After Transfer .....	40
Remedies for Violations of IAD .....	44
Protections of IAD Unavailable .....	46
Tolling of Sentence .....	48
Where IAD Should Not be Used .....	48
IAD Statute Table .....	50

Appendices.....	52
Terminology, Definitions & Acronyms.....	53
Application for Requisition Form AG-101.....	55
Application for Requisition Form AG-102.....	60
Application for Requisition Form AG-103.....	65
Appendix A – Waiver of Extradition Form.....	70
Appendix B – Sample Photo Affidavit Form.....	72
Appendix C – Explanation of Inmate’s Rights.....	73
Appendix L-1 – Forms for use in prisoner initiated IAD requests.....	74
Appendix L-2 – Forms for use in prosecutor initiated IAD requests.....	75
Appendix L-3 – Special language for Nevada in prosecutor initiated IAD requests.....	77
IAD Form I.....	78
IAD Form II.....	80
IAD Form III.....	82
IAD Form IV.....	84
IAD Form V.....	86
IAD Form VI.....	88
IAD Form VII.....	90
IAD Form VIII.....	92
IAD Form IX.....	94
Directory of Kansas Extradition & Detainer Officials.....	96

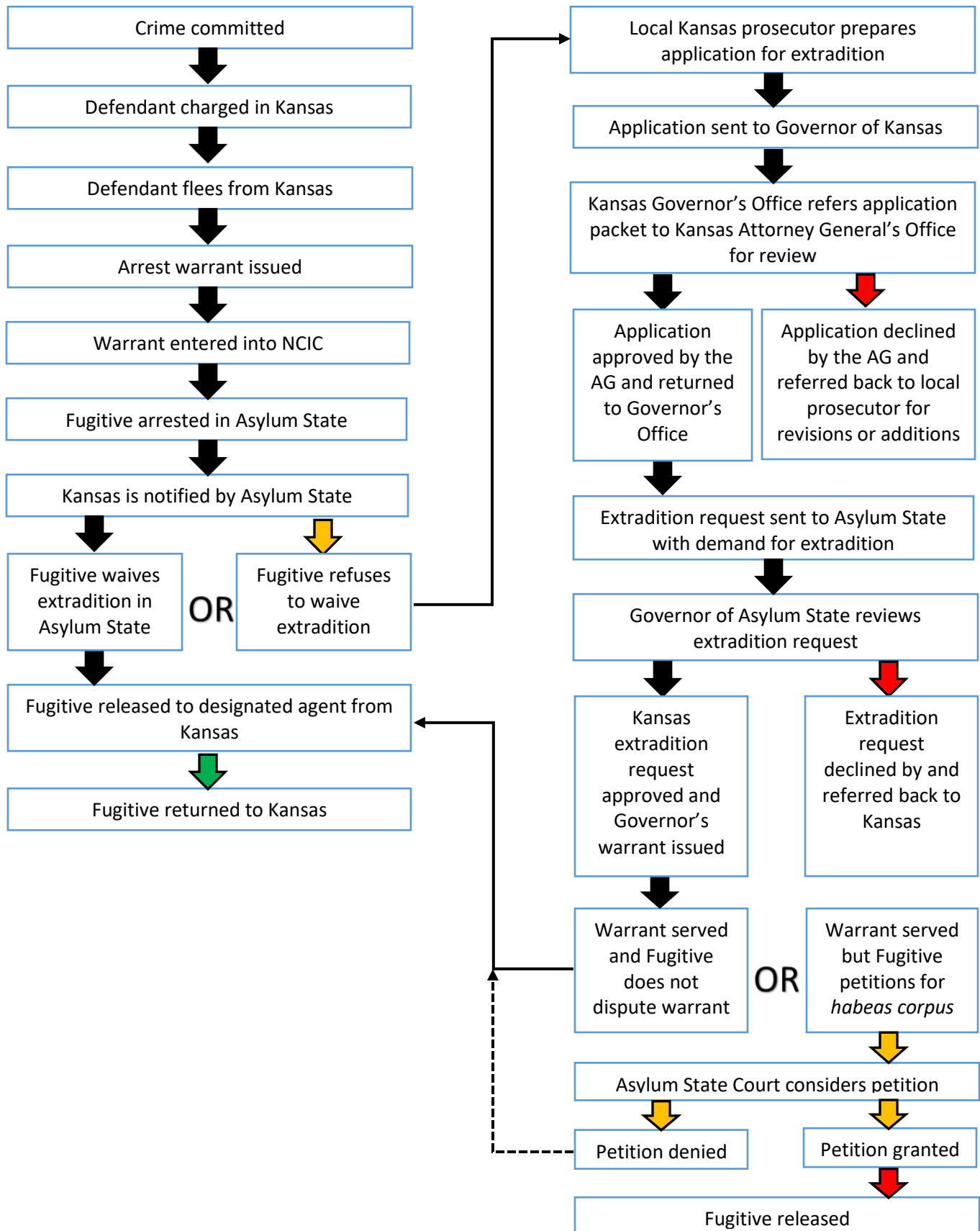
## EXTRADITION OVERVIEW CHART A

A BASIC OVERVIEW OF THE EXTRADITION PROCESS WHEN A FUGITIVE FROM ANOTHER U.S. JURISDICTION IS **LOCATED IN KANSAS**



## EXTRADITION OVERVIEW CHART B

A BASIC OVERVIEW OF THE EXTRADITION PROCESS WHEN A FUGITIVE **FROM KANSAS** IS FOUND IN ANOTHER U.S. JURISDICTION



## **FUNDAMENTALS OF EXTRADITION**

### **I. ARREST**

When a local law enforcement agency learns there is an outstanding out-of-state warrant against a person in their jurisdiction, the agency, under Kansas law, has two arrest options.

#### **A. Warrantless Arrest**

The first option is immediate arrest without warrant. Pursuant to K.S.A. 22-2714, a law enforcement officer may immediately take the accused into custody upon “reasonable information” that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year. In all other cases, it is necessary to obtain a local warrant (fugitive warrant) for the person’s arrest.

“Reasonable information” can be obtained through official police channels, NCIC or otherwise. However, it may be necessary to produce certified copies of the out-of-state charges and warrant as support for the arrest. These documents are produced at the arraignment as support for the fugitive complaint.

After the accused is taken into custody without a warrant, the law enforcement agency should:

1. Contact the demanding state prosecutor and determine whether that state wishes to have the accused detained for extradition and whether the accused has already signed a waiver of extradition as a condition of bail, probation or parole. If there was a pre-signed waiver enforceable in the asylum state, request that the demanding state officials send the materials required to effectuate the waiver. (See Appendix A)
2. If there is no prior waiver, determine whether the accused will waive extradition before an asylum state magistrate.
3. If the accused waives, notify the district or county attorney and request that they prepare a waiver form and set a court date for arraignment and execution of the waiver.
4. If no waiver is anticipated, immediately request that certified copies of the demanding state’s indictment, information, complaint, or judgment and warrant be sent from the local prosecutor or law enforcement agency in the demanding state. Additionally, any identification documents should be requested
5. Notify the district or county attorney and request preparation of a fugitive complaint and that they obtain a court date for arraignment and filing of the complaint.

6. Send booking photographs and fingerprints to demanding state prosecutor or law enforcement agency and request that the accused be identified as the same person wanted in that state. It is advisable to request that the demanding state prosecutor also include these identified photographs in their set of extradition papers. (See p. 31.)
7. Make arrangements with the prosecutor and court for presenting the accused to the judge or magistrate for arraignment with all practicable speed.

## **B. Arrest Upon Fugitive Warrant**

The second option is to obtain a fugitive warrant before arresting the fugitive. When the offense in the demanding state is a misdemeanor and/or when the accused is not likely to flee, law enforcement officers may choose to obtain a fugitive warrant before making the arrest, pursuant to K.S.A. 22-2713.

Before a law enforcement officer files a fugitive complaint, the law enforcement officer should:

1. Contact the demanding state prosecutor and determine whether they wish to have the accused detained for extradition and whether the accused has already signed waiver of extradition as condition of bail, probation or parole.
2. If there is no pre-signed waiver, the law enforcement agency should request from the demanding state prosecutor that certified copies of indictment, information, complaint, or judgment and warrant be forwarded immediately. Additionally, any materials or statements which might help to establish the identity of the fugitive should be transmitted.
3. When the documents are received from the demanding state prosecutor, the district or county attorney should prepare and file a fugitive complaint. The certified copies may be attached to the complaint as supporting evidence.
4. On the basis of the fugitive complaint, the judge or magistrate should issue a warrant of arrest. A certified copy may be attached to the complaint as supporting evidence. The accused can then be taken into custody and served with a copy of the warrant and complaint.
5. The law enforcement officer taking the accused into custody should then determine whether the accused will waive extradition. If they wish to waive extradition, the district or county attorney should prepare a waiver form and the accused should be taken before an asylum state judge or magistrate to execute the waiver.

If the accused does not waive extradition, they should be taken before a judge or magistrate with all practicable speed and complaint must be made against them under oath setting forth the ground for the arrest as in the preceding section; and thereafter their answer shall be heard as if they had been arrested on a warrant. K.S.A. 22-2714.



## **II. WAIVER AND ARRAIGNMENT**

As soon as possible after the accused is taken into custody, they should be taken before a judge or magistrate for arraignment. Here, the accused may formally waive extradition or they may be detained while formal extradition proceedings are pursued.

### **A. Waiver**

Following their arrest, the accused may, at any time, waive extradition to the demanding state (See Appendix A). Pursuant to K.S.A. 22-2726, when the accused wishes to waive extradition, they must be brought before a judge or magistrate where the accused will sign a written waiver after being advised by the judge as to the accused's rights to the extradition process and to seek a writ of habeas corpus. Once the waiver is signed, the judge or magistrate will order that the accused be delivered over to an authorized agent of the demanding state.

One copy of the waiver is sent to the asylum state's governor, one filed with the court, and two given to the agent from the demanding state.

Once such a waiver is executed, the fugitive is in the same legal position as if a governor's warrant had been served. Thus, fugitive should not be released on bail, at least not without the consent of the officials from both states. Likewise, the court should not permit the fugitive to voluntarily return to the demanding state unless the demanding state officials have consented.

Another kind of waiver is the pre-signed waiver. A pre-signed waiver occurs when a person, usually as a condition of bail, probation or parole, has previously signed a waiver of extradition should they be found in another state. When it is ascertained that the accused is subject to a pre-signed waiver, the local prosecutor should contact the demanding state and request certified copies of the following:

1. The demanding state's order conditionally releasing the accused;
2. The signed waiver of extradition and the condition requiring the accused to waive extradition; and
3. The order directing the return of the accused for violating conditions of their release.

Once the appropriate certified copies are sent, there will be a hearing in which the local prosecutor will present the documents to a judge or magistrate. The judge or magistrate should accept the certified copies as conclusive proof of the validity of the extradition waiver. If the judge or magistrate finds probable cause to believe the accused is the person named in the copies, they will order that the accused be remanded into custody and given over to authorized agents of the demanding state.

## **B. Arraignment**

If the accused does not waive extradition or is not subject to a pre-signed waiver, the accused should be brought before a magistrate or judge for arraignment without unnecessary delay.

1. The court states the name of the accused as it appears on the fugitive complaint and asks the accused if they are the person named in the out-of-state warrant.
2. If the accused denies being the person named in the out-of-state warrant, there will be an identity hearing in which the prosecutor must establish probable cause that the accused is, indeed, the person named in the information, verified complaint, judgment or sentence. The judge should accept this as probable cause. All that must be shown is that the accused is properly charged in the demanding state.
3. The prosecutor produces evidence that the accused is properly charged with a crime in the demanding state. This can be accomplished by producing a certified copy of the proper charging documents from the demanding state.
4. Once the identity of the accused is ascertained, or if the accused admits their identity, the court will indicate the reason for the arrest of the accused, and will advise the accused of their right to counsel.
5. Once counsel has been obtained and after counsel looks at the fugitive complaint, the court will explain that the accused is charged with being a fugitive from justice on the basis of a warrant from the demanding state.
6. The judge or magistrate should, in accordance with K.S.A. 22-2715, order the accused committed to the county jail for a period not exceeding thirty days to enable the arrest of the accused under a governor's warrant.

Pursuant to K.S.A. 22-2716, the court *may* grant bail for the accused unless the crime they are charged with is punishable by life imprisonment or death in the demanding state. The decision whether to grant bail, and the amount of the bail is *at the discretion of the asylum state court*. If the accused does not appear in court as ordered, the bail bond is forfeited in accordance with K.S.A. 22-2718.

Following the arraignment, the law enforcement agency or the local prosecutor should notify the demanding state prosecutor of the intention of the accused not to waive extradition and of the necessity to start compiling extradition documents.

If the thirty-day commitment period established in K.S.A. 22-2715 has expired without the accused being arrested on the governor's warrant, the court may recommit the accused for a period not to exceed sixty days under K.S.A. 22-2717. The court may, again, grant bail as provided in K.S.A. 22-2716.

### **III. APPLICATION FOR REQUISITION**

The demanding state prosecutor, upon hearing that a fugitive from their jurisdiction has been located in another state, should immediately start compiling documents required for an application for requisition to the demanding state governor.

The Kansas statute regarding applications for requisition, K.S.A. 22-2723, details the essential contents of an application for requisition.

#### **A. Contents of a Requisition Request**

A requisition consists of a form AG 101 for a person physically not in Kansas at time of the commission of a crime, a form AG 102 for a person physically in Kansas at the time of the commission of a crime, or a form AG 103 for a person sought for a violation of probation or parole. The form must be verified by affidavit and executed in triplicate. (See Appendices: AG-101, AG-102, and AG-103).

#### **B. Supporting Documents**

Certified copies of the following supporting documents must be included with the AG 101, AG 102, or AG 103:

1. For an individual **charged** with a crime:
  - a. Charging document, i.e., Complaint, Information or Indictment.
  - b. Affidavit of probable cause (not necessary if the charging document is an Indictment). However, there must have judicial finding of probable cause and it must be subscribed and sworn before a judge and the judge's signature should appear on the complaint. Some jurisdictions will accept the issuance of an arrest warrant as a judicial finding of probable cause. Some will not. A sample probable cause affidavit can be found in Appendix D.
  - c. Warrant.
  - d. In addition to the above court certified documents, copies of the criminal statutes violated.
  - e. The application must include some form of identification of the suspect. Examples of identification include, but are not limited to:
    - Certified Fingerprints
    - Authenticated booking photo
    - Photo affidavit (See Appendix B).

2. For an individual **convicted** of a crime and thereafter violated the terms of bail, probation, parole, community corrections, etc.:
  - a. Journal Entry of Conviction.
  - b. Sentencing document indicating defendant was placed on probation, community corrections, etc. (may be included in the Journal Entry of Conviction).
  - c. Documents indicating the defendant violated probation, community corrections, etc. These documents must include some information detailing the alleged violations, e.g., a field report from the probation officer; affidavit from the probation officer in support of a motion to revoke; or details of the alleged violations sworn by the prosecuting attorney.
  - d. Warrant for arrest on the violation.
  - e. The application must include some form of identification of the suspect. Examples of identification include, but are not limited to certified copies:
    - Certified Fingerprints
    - Authenticated booking photo
    - Photo affidavit (See Appendix B).

### **C. Special Types of Cases**

1. Criminal non-support.

All States have enacted a version of the Uniform Interstate Family Support Act (“UIFSA”). In Kansas, the statutory scheme is K.S.A. § 23-36,101, et seq. and was enacted on January 1, 1998. Prior to this time, enforcement of child or spousal support orders was governed by Uniform Reciprocal Enforcement of Support Act (“URES A”).

Some states still have a form of URESA in their statutory schemes, and the provisions of URESA still apply in Kansas actions for child or spousal support issued prior to January 1, 1998.

However, for all actions involving child or spousal enforcement orders issued after July 1, 1998, the Kansas UIFSA applies.

Under the Kansas version of UIFSA, if a fugitive is charged with criminal non-support of a child or spouse, it is an extraditable offense. However, under UIFSA, before making a demand for the extradition of a fugitive charged with criminal non-support from another state, the Governor of Kansas may require the Kansas prosecutor seeking extradition “*to demonstrate that at least 60 days previously the obligee had initiated proceedings for support pursuant to this act or that the proceeding would be of no avail.*” See K.S.A. § 23-36,802(a).

Further, if a demanding state is seeking rendition of a person located Kansas charged with criminal non-support of a child or spouse, the Governor of Kansas “*may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.*” See K.S.A. § 23-36,802(b).

Under either circumstances, if a proceeding seeking enforcement of a child or spousal support order has been initiated under the UIFSA, and the fugitive prevails in such an action, the Governor of the asylum state may decline to honor a demand for extradition. See K.S.A. § 23-36,802(c).

If a proceeding seeking enforcement of a child support order has been initiated under the UIFSA, and the petitioner of said action prevails, the Governor of the asylum state may decline to honor a demand from extradition if the fugitive is complying with the support order. See K.S.A. § 23-36,802(c).

It is Governor Kelly’s position that any individual charged with nonsupport of a child or spouse is an extraditable fugitive. However, some states do require that civil remedies be pursued prior to extraditing the fugitive. Therefore, for such states, please include an affidavit by the prosecutor stating either URESA or UIFSA has been used, or why such civil remedies will likely be ineffective.

## 2. Military.

Extradition of members of the United States military is governed by 10 U.S.C. § 814, which provides as follows:

*“(a) Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.”*

*“(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the sentence of the court-martial, and the offender after having answered to the civil authorities for their offense shall, upon the request of competent military authority, be returned to military custody for the completion of their sentence.”*

3. Foreign Countries.

International extradition is governed by treaties with the various participating nations. If your fugitive has fled to a foreign country, you must contact the Office of International Affairs. The Office of International Affairs will work with the prosecutor to prepare a request for extradition to be submitted to a foreign country.

4. Civil Commitment of Escapees/Outpatient Absconders.

Extradition is possible only in criminal matters and may not be used to enforce a civil judgment. Normally, when a person has been involuntarily committed to a civil treatment program, the criminal proceedings are suspended pending completion of that program. If the person escapes or if they abscond while on outpatient status, there is technically no criminal charge pending. In order to return such a person through the extradition process, it is necessary to obtain a court order reinstating the criminal proceedings.

5. Prisoners.

Where the fugitive is presently incarcerated following a conviction in the asylum state, the most common means of returning the fugitive to trial is through the **Interstate Agreement on Detainers (IAD)**. However, in certain cases, notably where the fugitive is likely to receive the death penalty, or is wanted for a parole or probation violation, it is desirable to use an alternative, namely, extradition with an **Executive Agreement**.

- a. Louisiana and Mississippi have not adopted the IAD and an Executive Agreement is necessary to obtain custody of a fugitive incarcerated in those states.

6. Juveniles.

The Interstate Compact of Juveniles provides for the return of runaways, escapees and juveniles charged as delinquent for violation of a criminal law. The compact also provides for out-of-state supervision of delinquent juvenile probationers and parolees. The **demanding** state determines juvenile status, not the fugitive state.

In Kansas, the Juvenile Services Division of the Kansas Department of Corrections can answer questions on how juveniles are to be handled.

7. Extradition from Indian Reservations.

Except in certain states designated by Congress, procedures for extradition either from or to an Indian reservation will usually depend on whether the particular tribe has an established judicial system and has enacted provisions governing the rendition of accused persons. Where no such law exists, a state seeking rendition of an accused from a reservation should follow normal extradition procedures, i.e., the prosecutor sends an application and supporting documents to the governor, who attaches them to their requisition and forwards the package to the asylum state's

governor. Once the governor's rendition warrant is issued, it would normally be forwarded to the sheriff in whose county the reservation is located. Although protocol dictates coordination with tribal authorities, the sheriff would have authority to execute the warrant. (State ex rel. Old Elk v. District Court in and for Big Horn County, 552 P.2d 1394, 1396 (Mont. 1976).)

On the other hand, where the tribe has enacted laws governing rendition matters, the demanding state's governor may apply for rendition directly to the tribal authorities, usually the tribal council or the tribal court. In such cases, the decision to extradite is solely up to the tribal authorities and state officials may not enter the reservation to arrest the accused. (State of Arizona ex rel. Merrill v. Turtle, 413 F.2d 683, 684 (9th Cir. 1969).) Thus, in cases where there is an established judicial system and appropriate enactments, a demanding state should treat the tribe similarly to any asylum state. If the requisition nevertheless is sent to the governor's office in such cases, it should be forwarded to tribal authorities.

#### IV. DEMANDING STATE GOVERNOR'S REQUISITION

Upon receiving the application for requisition, the governor's office will forward the application to the attorney general's office for approval as to its legal sufficiency. If the application is in proper legal form, the attorney general indicates approval to the governor and the governor then executes their formal requisition upon the asylum state governor.

#### V. ASYLUM STATE GOVERNOR'S WARRANT OF RENDITION

When the demanding state governor's formal requisition is received by the asylum state governor, they forward it to the attorney general for their opinion as to its legality. If the attorney general concludes that the requisition is legally sufficient, the governor signs a warrant of rendition for the fugitive directed to any law enforcement officer or entrusted person. The warrant shall be sealed with the state seal and shall recite the facts necessary to the validity of its issuance.

#### VI. SERVICE OF GOVERNOR'S WARRANT OF RENDITION

Once the governor executes a rendition warrant it is then sent to the law enforcement agency having custody of the accused. ***The asylum state governor's warrant of rendition is an original warrant of arrest and it supersedes any existing commitment order.*** It is, therefore, necessary to serve the warrant upon the fugitive and to take them into custody if they are not already in custody. K.S.A. 22-2708 says that a fugitive can be arrested at any time and any place where they can be found within the state.

In the case where there are local charges pending against the fugitive, the law enforcement officer, upon receiving the governor's warrant, should contact the district attorney and ascertain whether the district attorney wishes to continue prosecution of the local charges. If the district attorney wishes to continue prosecution on the local charges, the law enforcement officer should inform the governor's office of the local charges and of the district attorney's desire to continue prosecution.

All charges should be disposed of before the fugitive is surrendered to the demanding state. ***The prosecutor has the option of holding the rendition warrant until local charges are disposed of, or serving the rendition warrant and staying execution until disposition of the local charges.***

If the fugitive is then sentenced to the Kansas Department of Corrections, the prosecutor should return the rendition warrant to the governor's office, who will notify the demanding state to lodge a detainer.

## **VII. ARRAIGNMENT ON GOVERNOR'S WARRANT OF RENDITION**

When the warrant has been served, the fugitive must be taken before a judge and arraigned on the warrant. K.S.A. 22-2710 establishes the procedure for this arraignment:

1. The judge will inform the fugitive of the demand made for their surrender and of the crime with which they are charged.
2. The judge will inform the fugitive of their right to legal counsel.
3. If the fugitive or their counsel desire to test the legality of the arrest, the judge shall fix a reasonable time for the accused to apply for a writ of habeas corpus.

The fugitive shall not be delivered over to the demanding state without this process. Any officer who delivers the fugitive to an agent of the demanding state in willful disobedience of K.S.A. 22-2710, is guilty of a class B misdemeanor, pursuant to K.S.A. 22-2711.

## **VIII. BAIL AFTER SERVICE OF GOVERNOR'S RENDITION WARRANT**

Power to grant bail to prisoners being held solely for extradition proceedings is not inherent in the courts, but must arise by virtue of constitutional or statutory provisions (State ex rel. Stringer v. Quigg, 107 So. 409, 91 Fla. 197). K.S.A. 22-2716 allows judges or magistrates in this state to admit the prisoner to bail by bond, conditioned for prisoner's appearance before the judge or magistrate at a specified time to be arrested upon the warrant of the Governor of Kansas. No section of K.S.A. Chapter 22 addresses the allowance of a prisoner posting bond after being served with the governor's warrant.

It is this Office of the Governor's opinion that since the governor has authorized the extradition, the granting of bail on a non-statutory ground would interfere with the exercise of executive discretion.

## **IX. HABEAS CORPUS**

If the fugitive decides to test the legality of their arrest, they may do so by applying for a writ of habeas corpus under K.S.A. 22-2710.

Once a habeas corpus petition has been filed, the court may dismiss the petition or issue an order to show cause. If the petition is denied, the fugitive is rendered over to the demanding state's agents. If there is an order to show cause, the fugitive's response is due at the earliest date reasonable under the circumstances of the case. Because the issues which can be raised to challenge the extradition at this point are very limited, usually 10 days is considered "reasonable" for this purpose.

There are only four issues that can be brought up on habeas corpus to challenge extradition.



1. Whether the accused in custody is the same person named in the extradition request.
2. Whether the accused is a fugitive.
3. Whether the accused is charged with or convicted of a crime in the demanding state.
4. Whether the extradition documents on their face are in order.

The fugitive has the burden of proving by clear and convincing evidence that one or more of these issues are in their favor.

Questions of guilt or innocence may not be raised in the asylum state courts. Also, affirmative defenses to the substantive offense such as lack of a speedy trial, double jeopardy, the unconstitutionality of the statute under which the fugitive is charged, or extradition is sought for an improper prosecutorial motive may not be brought up in asylum state courts. Those are issues for demanding state courts to resolve.

If habeas corpus is granted, the state has two options:

1. Seek an extraordinary writ. Since the appeal process is time consuming, this is a better way to appeal.
2. Initiate a second attempt at extradition. The entire process must be done over with the defects cured. This is permissible since extradition proceedings are not subject to res judicata.

## **X. RENDITION**

If habeas corpus has been denied and there are no further stays, the fugitive is now ready to be rendered over to the agents of the demanding state. The law enforcement agency from the jurisdiction in the demanding state where the charges are pending should be notified that the fugitive is ready for transportation back to the demanding state.

While Kansas law does not provide a time limit within which agents of the demanding state must appear in the asylum state to take custody, the federal act does. 18 U.S.C. § 3182 states that “if no agent appears within thirty days from the time of the arrest, the prisoner may be discharged.” The “arrest” refers to the service of the governor’s rendition warrant. This provision is permissive and not mandatory, and after thirty days, the court has discretion to release the fugitive. However, note that by implication, any release prior to the thirty days would be in violation of federal law and an infringement on the demanding states constitutional right to the return of its fugitive from justice.

## **XI. NONCOMPLIANCE PENALTIES**

Violation of proper extradition procedures can give rise to a cause of action under the federal Civil Rights Act. 42 U.S.C. § 1983 provides the following:

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

In addition to civil liabilities, K.S.A. 22-2711 makes it a class B misdemeanor for any officer to deliver custody of a fugitive to the demanding state a person who has not been afforded certain rights as specified in K.S.A. 22-2710.

## **XII. COSTS OF EXTRADITION**

### **A. Kansas as Asylum State**

On the surface, recovery of the asylum state's costs for housing fugitives seems fair. Indeed, the Kansas Legislature must have had similar thoughts when it passed K.S.A. 19-1917 in 1868. However, the Tenth Circuit Court of Appeals has overruled this statute. In Colfax County Board of County Commissioners v. State of New Hampshire, 16 F.3d 1107 (10th Cir. 1994), the court held that the county in the asylum state is barred from seeking to recover expenses, and that the right to seek recovery is solely that of the governor of the asylum state.

### **B. Kansas as Demanding State**

K.S.A. 22-2724 states that expenses that accrue from the extradition procedure shall be treated as court costs and will be fixed upon the fugitive, provided the fugitive is convicted of the offense for which they were extradited. Expenses that accrue from the extradition procedure include such things as air fare, car rental, lodging, meals and any other expenses that arise from extraditing the fugitive.

## **UNIFORM CRIMINAL EXTRADITION ACT REFERENCE TABLE**

Alabama .....	Ala. Code 1975, §§ 15-9-20 to 15-9-65
Alaska .....	AS 12.70.010 to 12.70.290
Arizona.....	A.R.S. §§ 13-3841 to 13-3870.02
Arkansas.....	A.C.A. §§ 16-94-201 to 16-94-231
California .....	Cal. Pen. Code, §§ 1547 to 1558
Colorado.....	C.R.S.A. §§ 1973, 16-19-101 to 16-19-133
Connecticut .....	C.G.S.A. §§ 54-157 to 54-185
Delaware .....	11 Del.C. §§ 2501 to 2530
District of Columbia .....	DC ST § 23-701 to § 23-707
Florida.....	F.S.A. §§ 941.01 to 941.30
Georgia.....	Ga Code Ann., §§ 17-13-20 to 17-13-49
Hawaii .....	HRS §§ 832-1 to 832-27
Idaho .....	I.C. §§ 19-4501 to 19-4527
Illinois .....	725 ILCS 225/1 to 225/32
Indiana.....	AIC 35-33-10-3
Iowa.....	I.C.A. §§ 820.1 to 820.29
Kansas .....	K.S.A. §§ 22-2701 to 22-2730
Kentucky .....	KRS 440.150 to 440.420
Louisiana.....	LSA-C.Cr.P. arts. 261 to 281
Maine .....	15 M.R.S.A. §§ 201 to 229
Maryland .....	MD Code, Criminal Procedure, §§ 9-101 to 9-128
Massachusetts .....	M.G.L.A. c. 276, §§ 11 to 20R
Michigan .....	M.C.L.A. §§ 780.1 to 780.31
Minnesota.....	M.S.A. §§ 629.01 to 629.29
Missouri .....	V.A.M.S. §§ 548.011 to 548.300
Montana .....	MCA 46-30-101 to 46-30-413
Nebraska .....	R.R.S. 1943, §§ 29-729 to 29-758
Nevada .....	N.R.S. 179.177 to 179.235
New Hampshire .....	RSA 612:1 to 612:30
New Jersey .....	N.J.S.A. 2A:160-6 to 2A:160-35
New Mexico.....	NMSA 1978, §§ 31-4-1 to 31-4-31
New York.....	McKinney's CPL §§ 570.02 to 570.66
North Carolina .....	G.S. §§ 15A-721 to 15A-750
Ohio.....	R.C. §§ 2963.01 to 2963.29
Oklahoma.....	22 Okl.St. Ann. §§ 1141.1 to 1141.30
Oregon.....	ORSA 133.743 to 133.857
Panama Canal Zone .....	6 C.Z.C. §§ 5021 to 5050
Pennsylvania .....	42 Pa.C.S.A. §§ 9121 to 9148
Puerto Rico.....	34 L.P.R.A. § 1881 to 1881bb
Rhode Island .....	Gen. Laws 1956, §§ 12-9-1 to 12-9-35
South Dakota.....	SDCL 23-24-1 to 23-24-39
Tennessee.....	T.C.A. §§ 40-9-101 to 40-9-130
Texas .....	Texas C.C.P. Art. 51.13
Utah.....	U.C.A. 1953, 77-30-1 to 77-30-28
Vermont .....	13 V.S.A §§ 4941 to 4969
Virgin Islands.....	5 V.I.C. §§ 3801 to 3829
Virginia Code.....	1950, §§ 19.2-85 to 19.2-118

Washington .....	RCWA 10.88.200 to 10.88.930
West Virginia .....	Code, §§ 5-1-7 to 5-1-13
Wisconsin.....	W.S.A. 976.03
Wyoming.....	Wyo.Stat.Ann., §§ 7-3-201 to 7-3-227

## **EXTRADITION TIME LIMITATIONS**

The number of days available to perfect a Governor's warrant varies in each State that has adopted the UCEA. The following is a general comparison to calculate the *maximum* number of days in each state that a fugitive charge can remain active before being dismissed.

<b><u>STATE</u></b>	<b><u>NUMBER OF DAYS</u></b>
Alabama .....	No specific statutory time, but 90 days is standard procedure
Alaska .....	30 days, with a 60 day extension permissible
Arizona.....	30 days, with a 60 day extension permissible
Arkansas.....	Within a reasonable time
California .....	30 days, with a 60 day extension permissible
Colorado.....	35 days, with a 60 day extension permissible
Connecticut .....	30 days, with a 60 day extension permissible
Delaware .....	30 days, with a 60 day extension permissible
Florida .....	30 days from arrest, with a 60 day extension permissible
Georgia.....	30 days, with a 60 day extension permissible
Guam.....	60 days from arrest, with extension permissible under special circumstances
Hawaii .....	30 days from arrest, with a 60 day extension permissible
Idaho .....	30 days, with a 60 day extension permissible
Illinois .....	30 days, with a 60 day extension permissible
Indiana.....	30 days, with a 60 day extension permissible
Iowa.....	30 days, with a 60 day extension permissible
Kansas .....	30 days, with a 60 day extension permissible
Kentucky .....	30 days, with a 60 day extension permissible
Louisiana.....	30 days, with a 60 day extension permissible
Maine .....	60 days, with a 60 day extension permissible
Maryland .....	30 days, with a 60 day extension permissible
Massachusetts .....	30 days from arrest, with a 60 day extension permissible
Michigan .....	30 days, with a 60 day extension permissible
Minnesota.....	30 days from arrest, with a 60 day extension permissible
Mississippi .....	90 days
Missouri .....	30 days, with a 60 day extension permissible
Montana .....	30 days, with a 60 day extension permissible
Nebraska .....	60 days (90 under special circumstances)
Nevada .....	30 days, with a 60 day extension permissible
New Hampshire .....	30 days, with a 60 day extension permissible
New Jersey .....	30 days, with a 60 day extension permissible
New Mexico.....	30 days, with a 60 day extension permissible
New York.....	30 days from arrest, with a 60 day extension permissible
North Carolina .....	30 days from arrest, with a 60 day extension permissible
North Dakota.....	30 days, with a 60 day extension permissible
Ohio.....	30 days, with a 60 day extension permissible
Oklahoma.....	90 days

Oregon.....	45 days, with extensions permitted on a showing of good cause
Clackamas County .....	30 days
Curry County .....	30 days to initiate proceedings, 30 more to resolve
Douglas County .....	45 days
Jackson County .....	45 days
Lane County .....	30 days
Lincoln County .....	45 days
Linn County .....	30 days
Marion County .....	14 days to initiate proceedings, 14 to 21 days more to resolve
Multnomah County .....	30 days
Wasco County .....	30 days (from arraignment)
Washington County .....	30 days (from arraignment)
Pennsylvania .....	30 days, with a 60 day extension permissible
Puerto Rico.....	30 days, with a 60 day extension permissible
Rhode Island .....	30 days, with a 60 day extension permissible
South Carolina .....	90 days
South Dakota.....	30 days, with a 60 day extension permissible
Tennessee .....	90 days
Texas .....	30 days, with a 60 day extension permissible
Utah.....	30 days, with a 60 day extension permissible
Vermont .....	30 days, with a 60 day extension permissible
*Virginia .....	30 days, with a 60 day extension permissible
Washington .....	30 days, with a 60 day extension permissible
Washington, D.C.....	30 days
West Virginia.....	30 days, then a status hearing within 30 days, and one final 30 days to complete
Wisconsin.....	90 days from arrest
Wyoming.....	No specific time frame, but normally 30 days, with a 60 day extension permissible

**NOTE:** The aforementioned time limits can and will vary from the date of arrest, arraignment or date which identification is established. If you have questions, contact the local prosecutor or extradition officials in their respective jurisdictions.

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\* Cases transferred to West Virginia under the Interstate Compact for Adult Offender Supervision must be retaken/picked-up within 30 calendar days of the notice to the Demanding State that the offender is being held solely on the Demanding State's warrant and there are no other pending criminal cases or sentences to be served in the Asylum State.

## **UNIFORM INTERSTATE FAMILY SUPPORT ACT REFERENCE TABLE**

Alabama .....	Ala.Code 1975, §§ 30-3A-101 to 30-3A-906
Alaska .....	AS 25.25.101 to 25.25.903
Arizona.....	A.R.S. §§ 25-1201 to 25-1342
Arkansas.....	A.C.A. 9-17-101 to 9-17-905
California .....	Cal. Family Code, §§ 4900 to 4976
Colorado.....	C.R.S.A. §§ 14-5-101 to 14-5-1007
Connecticut .....	C.G.S.A. §§ 46b-212 to 46b-213v
Delaware .....	13 Del. C. §§ 6-101 to 6-903
District of Columbia .....	D.C.Code 2001, §§ 46-301.01 to 46-309.01
Florida .....	F.S.A. §§ 88.0011 to 88.9051
Georgia.....	O.C.G.A. §§19-11-100 to 19-11-191
Hawaii .....	HRS §§ 576B-101 to 576B-902
Idaho .....	I.C. §§ 7-1001 to 7-1062
Illinois .....	S.H.A. 750 ILCS 22/101 to 22/999
Indiana.....	IC § 31-18-1-4 to § 31-18-9-4
Iowa.....	I.C.A. §§ 252K.101 to 252K.904
Kansas .....	K.S.A. §§ 23-9,301 to 23-9,903
Kentucky .....	KRS 407.5101 to 407.5902
Louisiana.....	LSA-Children's Code arts. 1301.1 to 1308.2
Maine .....	19-A M.R.S.A. §§ 2801 to 3401
Maryland .....	Code, Family Law §§ 10-301 to 10.359
Massachusetts .....	M.G.L.A. c. 209D, §§ 1-101 to 9-902
Michigan .....	M.C.L.A. §§ 552.1101 to 552.1901
Minnesota.....	M.S.A. §§ 518C.101 to 518C.902
Mississippi .....	Code 1972, 93-25-1 to 93-25-117
Missouri .....	V.A.M.S. §§ 454.850 to 454.999
Montana .....	MCA §§ 40-5-101 to 40-5-197
Nebraska .....	R.R.S. 1943, §§ 42-701 to 42-751
Nevada .....	N.R.S. 130.0902 to 130.802
New Hampshire .....	RSA 546-B:1 to 546-B:60
New Jersey .....	N.J.S.A. 2A:4-30.65 to 2A:4-30.122
New Mexico.....	NMSA 1978 §§ 40-6A-101 to 40-6A-903
New York.....	McKinney's Family Ct. Act §§ 580-101 to 580-905
North Carolina .....	G.S. §§ 52C-1-100 to 52C-9-902
North Dakota.....	NDCC 14-12.2-01 to 14-12.2-49
Ohio.....	R.C. §§ 3115.01 to 3115.59
Oklahoma.....	43 Okl.St.Ann. §§ 601-100 to 601-901
Oregon.....	ORS 110.300 to 110.452
Pennsylvania .....	23 Pa. C.S.A. §§ 7101 to 7901
Rhode Island .....	Gen. Laws 1956, §§ 15-23.1-1 to 15-23.1-907
South Carolina .....	Code 1976, §§ 63-17-2900 to 63-17-4040
South Dakota.....	SDCL § 25-9B-101 to § 25-9B-903
Tennessee.....	Tenn.Code §§ 36-5-2001 to 36-5-2902
Texas .....	V.T.C.A. Family Code §§ 159.001 to 159.901
Utah.....	U.C.A. 1953, 78B-14-102 to 78B-14-902
Vermont .....	15B V.S.A. §§ 101 to 904
Virgin Islands.....	16 V.I.C. §§ 391 to 451

Virginia .....	Code 1950, §§ 20-88.32 to 20-88.82
Washington .....	RCWA 26.21A.005 to 26.21A.915
West Virginia .....	Code, 48-16-101 to 48-16-903
Wisconsin.....	W.S.A. 769.101
Wyoming.....	Wyo.Stat.Ann., §§ 20-4-139 to 20-4-197



## **SPECIAL REQUIREMENTS IN OTHER STATES**

The Uniform Criminal Extradition Act (“UCEA”) has been enacted by the various states in many forms. Each state has its own unique requirements. **Kansas requires one original plus two copies of all documents necessary to perfect extradition. Where indicated below, the extra copies required is in addition to the original plus two copies Kansas requires.** The “special” requirements listed, such as probable cause, are considered “special” to the UCEA, but may not be different from what we require in Kansas.

**Alabama** – Where extradition is sought in a matter involving non-fugitive, extradition packages must include an *indictment*.

**Alaska** - In addition to the standard extradition documents, when a fugitive is *charged* with, but not *convicted* of a crime, probable cause must be established by including one of the following: (a) Properly certified indictment, preliminary hearing finding or order, or any document in which a judicial officer has found probable cause; (b) An arrest warrant, along with a copy of the statute, court rule, or appellate opinion which requires that probable cause be found prior to issuance of the warrant; or (c) An affidavit made before a magistrate by a witness with personal knowledge of the facts, or, if the affidavit is based on information and belief, an indication of the sources, details, reliability, and credibility of the information and belief.

**Arizona** – Identification required – photograph with affidavit and/or certified fingerprints. *Arizona requires a separate probable cause affidavit, signed by a judge, stating sufficient probable cause exists to support the filing of charges, unless the fugitive was indicted by a grand jury. The issuance of an arrest warrant by itself is not sufficient.*

**Arkansas** – Requires affidavit of probable cause; photos and fingerprints. Arkansas also requires the appointed extradition agent who will transport the fugitive to be of the same gender as the fugitive. The name and gender of the extradition agent must be listed in the extradition application.

**California** – Identification. Date of arrest in asylum state.

**Colorado** – Identification; judicial probable cause finding; does accept electronically transmitted or faxed documents; originals send by mail.

**Connecticut** – Showing of probable cause required. Photograph and/or fingerprints required for identification. Specific designation of agent (name and title). Female agent for female fugitive. Private transport services named as sole agent will not be honored.

**Delaware** – Probable cause finding.

**District of Columbia** – Probable cause finding required.

**Florida** – If extradition is based in whole or in part on a conviction, the package must include a judgment signed by a judge. If this document is not available, an affidavit by a judge as to the judgment and sentence will suffice. Probable cause finding required. Identification required.

**Georgia** – Identification required.

**Guam** – Documents must include felony arrest warrant. Indictment (when issued). Probable cause finding. Identification required.

**Hawaii** – None

**Idaho** – Documents must include the warrant; Judicial finding of probable cause; identification – fingerprints and/or photographs, or affidavit of identity.

**Illinois** – None

**Indiana** – None

**Iowa** – Documents must include the warrant. Identification

**Kansas** – Warrant must be based on the charging document. Identification. Affidavit or judicial finding of probable cause. Female agent for female fugitive. Copies of statute.

**Kentucky** – Where extradition is based on a violation of terms of probation or parole, documents must include a copy of the judgment and sentence and a statement as to how the terms were violated. Where the request is based upon a nonsupport charge, and where UIFSA remedies have not been attempted, prosecutor's UIFSA affidavit should state reasons why UIFSA would be of no avail. Female agent for female fugitive by Governor's policy.

**Louisiana** – Identification required; photographs/fingerprints or physical description.

**Maine** – Identification. Showing of probable cause. See 15 M.R.S.A §203.

**Maryland** – Identification. Female agent for female fugitive. Copy of statute violated.

**Massachusetts** – Extradition request for males should name at least one male extradition agent. Extradition requests for females should name at least one female agent.

**Michigan** – Identification-- fingerprint or photograph or detailed physical description.

**Minnesota** – Probable cause finding.

**Mississippi** – Identification.

**Missouri** – Identification. Affidavit of probable cause made before a magistrate (except with indictments).

**Montana** – Warrant and statute violated must be included.

**Nebraska** – Identification required. Female agent for females required. For IAD cases, will not release to private transportation companies, must be sworn officer.

**Nevada** – Warrant must be based on the charging document. Identification (photo and fingerprints preferred).

**New Hampshire** – If the documents do not contain an *indictment* the warrant *must* contain a determination of probable cause. Identification required.

**New Jersey** – Identification required. Showing of probable cause. Warrant must be based on the charging document. Female agent named for female fugitive; agents must be designated by name and title; no private transport companies may be named. Copy of statute violated. Include copy of statute that allows court clerk or other to act as magistrate who administers oath, takes sworn statements and issues warrants.

**New Mexico** – Warrant must be based on the charging document. The package or warrant *must* include a finding of probable cause. Female agent named for female fugitive.

**New York** – Warrant must be based on the charging document. Include copies of statutes violated. Copy of statute that allows for clerks or commissioners to act in capacity of magistrates, if applicable. Identification. Specific designation of agent *by name* and title. Female agent named for female fugitive.

**North Carolina** – Warrant must be based on the charging document. Designate agent by name. If transport services are used, must supply list of names.

**North Dakota** – None

**Northern Mariana Is.** – Time zone 18 hours ahead of EST. Fax and e-mail communications strongly recommended.

**Ohio** – Probable cause required – if not by judge, provide statement within prosecutor’s supporting affidavit or in separate statement. Warrant based upon the charging document. Female agent named for female fugitive. Identification required – certified photo and/or fingerprints; detailed physical description, SSN; DOB; identifying marks/tattoos. Copy of relevant criminal statutes.

**Oklahoma** – Female agent named for female fugitive.

**Oregon** – None.

**Pennsylvania** – Identification required: photo and/or prints with affidavit; Female agent for female or transgender fugitive; Copy of statute violated.

**Puerto Rico** – Female agent named for female or transgender fugitive. Identification required: photo and fingerprints when available.

**Rhode Island** – Warrant must be based on the charging document. Female agent named for female fugitive.

**South Carolina** – Include language in requisition that sentence carries a potential of at least one-year state prison. Certified copy of sentencing documenting the potential minimum sentence.

**South Dakota** –None

**Tennessee** – Identification (for extradition and detainer). Capias/warrant signed by a judge or magistrate if indictment used as charging document. Tennessee also requires the appointed extradition agent who will transport the fugitive to be of the same gender as the fugitive. The name and gender of the extradition agent must be listed in the extradition application.

**Texas** – Warrant must be based on the charging document. Female agent named for female fugitive. Specific designation of agent by *name* and title. Governor's Warrant expires within one year of issuance.

**Utah** – Put Lieutenant Governor in place of secretary of state on executive agreements.

**Vermont** – The demanding state must indicate in the cover letter the location of the fugitive in Vermont. Identification (fingerprints and/or photo preferred). Probable cause affidavit if no indictment.

**Virginia** – None.

**Virgin Islands** – Identification. The demanding state must indicate in the cover letter the location of the fugitive in the Virgin Island.

**Washington**– None.

**West Virginia** – None.

**Wisconsin** – Extradition documents must include a showing of probable cause or an arrest warrant issued by a judge or magistrate.

**Wyoming**– A copy of an indictment found or by an information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon. The indictment, information, or affidavit made before the magistrate shall substantially charge the person demanded with having committed a crime under the law of that state and the copy shall be authenticated by the executive authority making the demand.

# **INTERSTATE AGREEMENT ON DETAINERS**

## **I. INTRODUCTION**

The Interstate Agreement on Detainers (IAD) is a compact entered into individually by most states,<sup>2</sup> the District of Columbia and the United States,<sup>3</sup> and provides for the temporary transfer of prisoners who are wanted by other states for trial on criminal charges.<sup>4</sup>

### **A. Purpose**

The purpose of the IAD is to encourage the expeditious and orderly disposition of ***outstanding criminal charges*** and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The rationale underlying this purpose is that charges outstanding against a prisoner, detainers based on such untried charges, and difficulties in securing speedy trials of persons already incarcerated in other jurisdictions produce uncertainties, anxiety and apprehension which obstruct programs of prisoner treatment and rehabilitation.<sup>5</sup>

### **B. Definitions**

1. *Detainer* refers to 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.<sup>6</sup>
2. *Sending state* is the state in which the prisoner is incarcerated and which sends them to the state where charges are pending for purposes of trial.
3. *Receiving state* is the state in which untried criminal charges are pending which receives temporary custody of a prisoner for purposes of trial.

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<sup>2</sup> To date, only Louisiana and Mississippi have not become parties to the IAD.

<sup>3</sup> The IAD applies to interjurisdictional transfers between the states and federal jurisdictions. (*U.S. v. Mauro*, 436 U.S. 340 (1978)).

<sup>4</sup> IAD Article I; *Reed v. Farley*, 512 U.S. 339 (1994); *Carchmer v. Nash*, 473 U.S. 716 (3rd Cir. 1985).

<sup>5</sup> *Carchmer v. Nash*, 473 U.S. 716 (1985); *McCloud v. State*, 959 N.E.2d 879 (Ind.App. 2011); *State v. Townsend*, 722 N.W.2d 753 (Wis.App. 2006); *State v. Fuller*, 560 N.W.2d 97 (Minn.App. 1997); *Valentine v. Commonwealth*, 443 S.E.2d 445 (Va.App. 1994); *U.S. v. Hall*, 974 F.2d 1201(9th Cir. 1992); *State v. Leisure*, 838 S.W.2d 49 (Mo.App. 1992); *State v. Butler*, 496 So.2d 916 (Fla.App. 1986); *U.S. v. Greene*, 532 Fed.Appx. 124 (C.A.3 (Pa.) 2013).

<sup>6</sup> *Fex v. Michigan*, 507 U.S. 43 (1993); *Carchmer*, 473 U.S. 716; *Cuyler v. Adams*, 449 U.S. 433 (3rd Cir. 1981); *United States v. Mauro*, 436 U.S. 340 (2nd Cir. 1978).

4. *Anti-shuttling* refers to 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. PREREQUISITES TO APPLICATION OF IAD

### A. Must be a signatory state

The IAD only applies to those jurisdictions which have adopted it. In other jurisdictions (e.g., Louisiana and Mississippi), extradition with an executive agreement to return the prisoner after trial, or a writ of habeas corpus ad prosequendum, must be used.

### B. Detainer must be lodged

Before the provisions of the IAD apply, a detainer must be lodged against a prisoner with the records personnel of the institution where they are incarcerated.<sup>7</sup> The detainer should be lodged by the prosecutor or law enforcement agency of the jurisdiction where the untried charges are pending. A detainer may not need to be a formal document. Some courts have held any written notice to prison authorities advising them of untried charges against the prisoner will suffice. Others have required that a “formal” detainer be lodged.<sup>8</sup>

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<sup>7</sup> *State v. Nickerson*, 322 P.3d 421 (Mont. 2014); *McCloud v. State*, 959 N.E.2d 879 (Ind.App. 2011); *Smith v. Danberg*, 29 A.3d 246 (Del. 2011); *State v. Anderson*, 939 N.E.2d 1317 (Ohio 2010); *Fisher v. State*, 933 N.E.2d 526 (Ind. 2010); *Ricks v. U.S.*, 2013 WL 3894913 (W.D.Tex. 2013); *Prall v. U.S. Capitol Police*, 2013 WL 3285663 (D.N.J. 2013); *U.S. v. Knight*, 562 F.3d 1314 (11th Cir. 2009); *Stewart v. State*, 987 So.2d 729 (Fla. 2008); *State v. Hai Kim Nguyen*, 17 A.3d 256 (N.J.Super.A.D. 2011); *Schneider v. Comm.*, 17 S.W.3d 530 (Ky.App. 1999); *Comm.v. Boyd*, 679 A.2d 1284 (Pa. 1996); *State v. Herrick*, 686 A.2d 602 (Me. 1996); *State v. Morawe*, 927 P.2d 44 (N.M.App. 1996); *Dillard v. State*, 931 S.W.2d 157 (Mo.App.1996); *Johnson v. State*, 900 S.W.2d 475 (Tex.App. 1995); *State v. Stewart*, 881 P.2d 629 (Mont. 1994); *United States v. Bamman*, 737 F.2d 413 (4th Cir. 1984); *People v. Quintana*, 682 P.2d 1226 (Colo. 1984); *State v. Reynolds*, 359 N.W.2d 93 (Neb. 1984); *State v. Coffman*, 650 P.2d 144 (Or. 1982); *Gilbreath v. State*, 651 P.2d 699 (Okla. 1982); *In re Brooks*, 189 Cal.App.3d 866 (1987); *People v. Bolin*, 712 P.2d 1002 (Colo. 1986); *People v. Rhoden*, 216 Cal.App.3d 1242 (1989); *United States v. Donaldson*, 978 F.2d 381 (7th Cir. 1992) [IAD ceases to apply when detainer withdrawn (charges dismissed)]; *State v. Barney*, 189 P.3d 1277 (Utah 2008); *U.S. v. Koufus*, 280 F.Supp.2d 647 (W.D.Ky. 2003).

<sup>8</sup> *Carchman v. Nash*, 473 U.S. 716 (1985); *Devine v. State*, 120 So.3d 171 (Fla.App. 2013); *State v. Estes*, 883 P.2d 1335 (Ore.App. 1994); *People v. Paulus*, 320 N.W.2d 337 (Mich. 1982); *Gilbreath v. State*, 651 P.2d 699 (Okla. 1982). Cf. *State v. Williams*, 573 N.W.2d 106 (Neb. 1997); *People v. Rhoden*, 216 Cal.App.3d 1242 (1989); *In re Brooks*, 189 Cal.App.3d 866 (1987); *State v. Herrick*, 686 A.2d 602 (Me. 1996); *People v. Gallego*, 502 N.W.2d 358 (Mich.App. 1993); *Theis v. State*, 30 P.3d 1140 (Nev. 2001) [same]; *State v. Roberson*, 897 P.2d 443 (Wash.App. 1995); *State v. Baker*, 966 A.2d 488 (N.J. 2009); *Sweeney v. State*, 704 N.E.2d 86 (Ind. 1998); *State v. Barney*, 189 P.3d 1277 (Utah App.2008); *United States v. Knight*, 562 F.3d 1314 (11th Cir. 2009).

**NOTE:** The law does not require officials, where charges are pending, to lodge a detainee.<sup>9</sup>

### C. Serving term of imprisonment

The IAD applies whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a member state. It does not apply to prisoners who are awaiting trial or sentencing in the sending state.<sup>10</sup> Moreover, it ceases to apply once a sentenced prisoner is released.<sup>11</sup> The IAD has been held to apply to inmates of state juvenile institutions.<sup>12</sup>

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<sup>9</sup> *Spalding v. State*, 992 N.E.2d 881 (Ind.App. 2013); *McCloud v. State*, 959 N.E.2d 879 (Ind. 2011); *Smith v. Danberg*, 29A.3d 246 (Ohio 2011); *State v. Anderson*, 939 N.E.2d 1317 (Ohio App. 2010); *Fisher v. State*, 933 N.E.2d 526 (Ind.App. 2010); *Russo v. Johnson*, 129 F.Supp.2d 1012 (S.D.Tex. 2001); *State v. DeAngelis*, 658 A.2d 7 (R.I. 1995); *State v. Leyva*, 906 P.2d 910 (Utah App. 1995); *People v. Rhoden*, 216 Cal.App.3d 1242 (1989); *People v. Brooks*, 189 Cal.App.3d 866 (1987); *United States v. King*, 909 F.Supp. 369 (E.D.Va. 1995); *People v. Castoe*, 86 Cal.App.3d 484 (1978); but see *People v. Cave*, 81 Cal.App.3d 957, 963-964 (1978).

<sup>10</sup> *Smith v. Warner*, 2014 WL 118742 (W.D.Wash. 2014); *State v. Springer*, 406 S.W.3d 526 (Tenn. 2013); *Bable v. Corbin*, 2013 WL 5514283 (W.D.Pa. 2013); *State v. Fay*, 763 So.2d 473 (Fla.App. 2000); *Comm. v. Tracy*, 737 N.E.2d 930 (Mass.App. 2000); *Bruce v. State*, 998 S.W.2d 91 (Mo.App. 1999); *United States v. Taylor*, 173 F.3d 538 (6th Cir. 1999); *State v. Herrick*, 686 A.2d 602 (Me. 1996); *People v. Phillips*, 552 N.W.2d 487 (Mich.App. 1996); *People v. Garner*, 224 Cal.App.3d 1363 (1990); *People v. Zetsche*, 188 Cal.App.3d 917 (1987); *United States v. Maldonado*, 601 F.Supp. 502 (D.C.W.Va. 1985); *United States v. Wilson*, 719 F.2d 1491 (10th Cir. 1983); *People v. Gabbidon*, 455 N.Y.S.2d 244 (N.Y. 1982); *Comm. v. Alexander*, 464 A.2d 1376 (Pa. 1983); *Crooker v. United States*, 814 F.2d 75 (1st Cir. 1987); *Dawes v. State*, 135 So.3d 420 (Fla.App. 2014); *State v. Watson*, 657 A.2d 776 (Me.1995); *United States v. Collins*, 863 F.Supp. 102 (E.D.N.Y. 1994); *U.S. v. Paige*, 332 F.Supp.2d 467 (D.R.I. 2004); *State v. Frohnhofer*, 264 P.3d 739 (N.M.App. 2011); *Smith v. Elo*, 61 F.Supp.2d 668 (E.D. Mich. 1999); *Roesch v. State*, 196 P.3d 795 (Wyo. 2008); *U.S. v. Hoffman*, 2009 WL 3832654 (S.S.W.Va. 2009); *People v. Swafford*, 762 N.W.2d 902 (Mich. 2009); *U.S. v. Knight*, 562 F.3d 1314 (11th Cir. 2009); *U.S. v. Gezelman*, 522 F.Supp.2d 344 (Mass. 2007); *State v. Baker*, 966 A.2d 488 (N.J. 2009); *Com. v. Destephano*, 87 A.3d 361 (Pa.Super. 2014).

<sup>11</sup> *State v. Vonbehren*, 777 N.W.2d 48 (Minn.Ct.App. 2010); *Sackman v. State*, 277 S.W.3d 304 (Mo.Ct.App. 2009); *Swanigan v. U.S.*, 853 A.2d 742 (D.C.Cir. 2004); *Cunningham v. State*, 14 S.W.3d 869 (Ark. 2000); *Pristavec v. State*, 496 A.2d 1036 (Del. 1985); *State v. Butler*, 496 So.2d 916 (Fla.App. 1986); *State v. Smith*, 353 N.W.2d 338 (S.D. 1984); *State v. Julian*, 765 P.2d 1104 (Kan. 1988); *State v. Dunlap*, 290 S.E.2d 744 (N.C.App. 1982); cf. *Giles v. State*, 908 S.W.2d 303 (Tex.App. 1995); *Loane v. State*, 677 S.W.2d 864 (Ark.App. 1984). See also *People v. Zetsche*, 188 Cal.App.3d 917, 925-926, fn. 4 (1987); *State v. Bellino*, 557 A.2d 963 (Me. 1989); *State v. Chapman*, 565 A.2d 259 (Conn.App. 1989). To the contrary, see *Snyder v. Sumner*, 960 F.2d 1448 (9th Cir. 1992); disagreed with by *Cunningham v. State*, 14 S.W. 3d 869 (Ark. 2000).

<sup>12</sup> *Lara v. State*, 909 S.W.2d 615 (Tex. 1995).

There is some question whether the IAD applies to inmates who are subject of an IAD request, but are serving a sentence in another state's jail. The basic argument is a local jail is not considered a "penal or correctional institution of a state" for purposes of the IAD. It could also be argued the purposes and policies intended by the IAD are not promoted by applying it to an inmate serving a relatively short term in a local jail. There is authority on both sides, and a number of jurisdictions have held the IAD does not apply to county jail inmates.<sup>13</sup>

However, some states have passed laws to alleviate overcrowding in state prison institutions.<sup>14</sup> In doing so, felons who were previously sentenced to state prison are now serving their sentence in local county jails. Given its purpose, the IAD may apply to certain felons who are now sentenced to imprisonment in local county jails instead of prison facilities.

There are no Kansas cases directly on point addressing this question, and Kansas does not have a clear cut definition of what constitutes a "penal or correctional institution" under the IAD.<sup>15</sup> Before 2016, the Kansas Supreme Court had held local jails *did* qualify as "penal or correctional institution of this state" under the *intrastate* Uniform Mandatory Disposition of Detainer's Act ("UMDDA").<sup>16</sup> At the time of this ruling, both the IAD and UMDDA contained nearly identical language regarding a "penal or correctional institution" of a state.

On July 1, 2016, the Kansas Legislature modified the Kansas UMDDA, deleting the language "~~person who is imprisoned in a penal or correctional institution of this state~~" and replacing it with "inmate in the custody of the secretary of corrections."<sup>17</sup>

The language in the IAD, however, *remains unchanged*.<sup>18</sup>

Although individual states vary in their interpretation, it is Governor Kelly's position that the IAD *does* apply to inmates incarcerated in another state's jail. Whenever in doubt, it is always best practice return an inmate who has made an IAD request, even if the inmate is incarcerated in another state's jail as opposed to

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<sup>13</sup> See *Brewer v. State*, 913 P.2d 73 (Id.App. 1996); *State v. Breen*, 882 P.2d 472 (Idaho 1994); *Crooker v. United States*, 814 F.2d 75 (1st Cir. 1987); *State v. Wade*, 772 P.2d 1291 (Nev. 1989); *Dorsey v. State*, 490 N.E.2d 260 (Ind. 1986). But see *People v. Zetsche*, 188 Cal.App.3d 917 (1987); *Felix v. United States*, 508 A.2d 101 (D.C.App. 1986); *Escalanti v. Superior Court*, 799 P.2d 5 (Ariz. 1990); *State v. Lock*, 839 S.W.2d 436 (Tenn. 1992); *State v. Wilson*, 704 P.2d 1217 (Wash.App. 1985).

<sup>14</sup> In California, a recent change in the law provided that non-violent, non-serious, non-sex offenders serve their sentences (more than one year) in local county jails and not state prison facilities. (Cal. Pen. Code, § 1170, subd. (h).)

<sup>15</sup> See *Cooker v. United States*, 814 F.2d 75 (1st Cir. 1987); *People v. Zetsche*, 188 Cal.App.3d 917 (1987); *Felix v. United States*, 508 A.2d 101 (D.C. App. 1986).

<sup>16</sup> See *State v. Burnett*, 297 Kan. 447, Syl. ¶5, 301 P.3d 698 (2013).

<sup>17</sup> See L. 2013, Vol. I, Ch. 32, § 1, Pg. 172 (effective July 1, 2013).

<sup>18</sup> See K.S.A. § 22-4401.



a prison. Given the overlapping language between the previous version of the Kansas UMDDA and the current version of the Kansas IAD; the Kansas Supreme Court's ruling on the "penal or correctional institution" language; and, the lack of Legislative changes to the current Kansas IAD, returning the inmate from a local jail causes no prejudice to the inmate and saves the prosecution from potentially incurring a penalty of dismissal with prejudice for non-compliance with the IAD.

#### D. Detainer based on untried charge

The IAD applies only where the detainer lodged against the prisoner is based upon an *untried* indictment, information or complaint. It does not apply when the detainer is for an alleged probation or parole violation.<sup>19</sup> Likewise, it does not apply with regard to a deportation detainer,<sup>20</sup> or in cases where the prisoner had previously escaped from another state's prison and is wanted there just on the basis of the unsatisfied prison term.<sup>21</sup> The weight of authority indicates the IAD does not apply to prisoners who have already been tried but remain to be sentenced on the receiving state's charges.<sup>22</sup> The one case (*Tinghitella v. California*, 718 F.2d 308 (9th Cir. 1983)) which held it applicable in such circumstances (see fn. 190) also recognized that the prisoner ***may not demand return*** to the state with the unsentenced conviction just for the purpose of sentencing. Rather, under Article III of the IAD, the prisoner makes a "request for final disposition" of the matter. This means that in states which provide for sentencing *in absentia* of defendants who have absconded or otherwise voluntarily removed themselves from the court's jurisdiction, all the prisoner is entitled to is ***prompt sentencing***, not return to the sentencing state for that purpose.

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<sup>19</sup> *Smith v. Danberg*, 29 A.3d 246 (Del. 2011); *Carchman v. Nash*, 473 U.S. 716 (1985); *McDonald v. N.M. Parole Bd.*, 955 F.2d 631 (10th Cir. 1991); *In re Shapiro*, 14 Cal.3d 711, 714, fn. 2 (1975); *United States v. Roach*, 745 F.2d 1252 (9th Cir. 1984); *Hopper v. United States Parole Comm.* (9th Cir. 1983) 702 F.2d 842; *State v. Smith* (Conn.App. 2000) 749 A.2d 67; *U.S. v. Carnes* (E.D.Mich. 1999) 41 F.Supp.2d 719; *State v. Sparks* (N.M. 1986) 716 P.2d 253; *Garcia v. Cooper* (Colo. 1986) 711 P.2d 1255; *Hefferman v. State* (Wyo. 1992) 824 P.2d 1271; cf. *Phipps v. Kentucky State Parole Bd.*, 2013 WL 5964678 (E.D.Ky. 2013).

<sup>20</sup> *U.S. v. Gonzales-Mendoza* (9th Cir. 1993) 985 F.2d 1014; *Argiz v. U.S. Immigration* (7th Cir. 1983) 704 F.2d 384; *Cabrera-Delgado v. U.S.* (S.D.N.Y. 2000) 111 F.Supp.2d 415.

<sup>21</sup> *People v. Superior Court (Lopez)*, 130 Cal.App.3d 776 (1982); *In re Gilchrist*, 134 Cal.App.3d 867 (1982); *United States v. Bottoms*, 755 F.2d 1349 (9th Cir. 1985).

<sup>22</sup> IAD inapplicable: *State v. Jimenez*, 283 Neb. 95 (Neb. 2012); *People v. Peterson*, 695 N.Y.S.2d 550 (1999); *Stephenson v. State*, 801 So.2d 34 (Ala.App. 2000); *Moody v. Consentino*, 843 P.2d 1355 (Colo. 1993); *People v. Nosek*, 654 N.Y.S.2d 63 (1997); *State v. Leyva*, 906 P.2d 910 (Utah App. 1995); *People v. Mahan*, 111 Cal.App.3d 28 (1980); *People v. Castoe*, 86 Cal.App.3d 484 (1978); *State v. Barnes*, 471 N.E.2d 514 (Ohio App. 1984). IAD applicable: *Tinghitella v. California*, 718 F.2d 308 (9th Cir. 1983); but see *State v. Barefield*, 756 P.2d 731 (Wash. 1988); *U.S. v. Coffman*, 905 F.2d 330 (Kan. 1990); *State v. Bates*, 689 N.W. 2d 479, 481 fn. 2 (Iowa 2004) [*Tinghitella v. California* represents minority view]. Also note that state courts are not bound by intermediate federal appellate decisions. (*People v. Figueroa*, 2 Cal.App.4th 1584 (1992).)

### III. PROCEDURE<sup>23</sup>

The IAD provides procedures by which the prisoner may inform the jurisdiction which lodged the detainer against them of their whereabouts and request disposition of the underlying charges (Art. III) and also by which the prosecutor in the jurisdiction where the charges are pending may request temporary custody of the prisoner for the purpose of bringing them to trial (art IV).<sup>24</sup>

#### A. Prisoner's Request (Article III)

##### 1. Duty of prisoner

A prisoner who wishes to invoke the provisions of the IAD in order to dispose of another state's charges, which are the basis of a detainer, has the obligation to comply with the requirements of the IAD. Essentially, this simply entails advising the warden of their request for final disposition of the charges and signing the appropriate documents as prepared by the institutional staff. (See Appendix L-1)<sup>25</sup> The completed documents are sent to the prosecutor by the institution, *not* by the prisoner. "Self-help" procedures, such as a letter directly from the inmate to the Prosecutor, will not invoke the IAD.<sup>26</sup> Cases differ as to whether strict or merely substantial

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<sup>23</sup> The NAEO has developed standardized forms to assist in the IAD process. The NAEO has adopted a resolution strongly recommending that those participating jurisdictions use the NAEOs' standardized forms.

<sup>24</sup> The lodging of a detainer does not require either the inmate or the prosecutor to seek disposition under the IAD. (*State v. Stewart*, 881 P.2d 629 (Mont. 1994); *State v. Batungbacal*, 913 P.2d 49 (Haw. 1996).)

<sup>25</sup> *People v. Wilson*, 69 Cal.App.3d 631 (1977); *U.S. v. Espinoza*, 841 F.2d 326 (9th Cir. 1988); *People v. Bowman* (Mich. 1993) 502 N.W.2d 192; *Brooks v. State* (Md. 1993) 617 A.2d 1049; *Patterson v. State*, 885 S.W.2d 667 (Ark. 1994); *Pinto v. Comm. Of Correction*, 768 A.2d 456 (Conn.App. 2001); *Clutter v. Comm.*, 322 S.W.3d 59, 62 (Ky. 2010); *United States v. Thomas*, 342 Fed.Appx. 891 (4<sup>th</sup> Cir. 2009); *State v. Quinones*, 860 N.E.2d 793 (Ohio App. 2006); cf. *Comm. v. Malone*, 838 N.E.2d 1265 (Mass.App. 2005); *State v. Pero*, 851 A.2d 41 (N.J.Super. 2004).

<sup>26</sup> *Clutter v. Commonwealth*, 322 S.W.3d 59 (Ky. 2010); *U.S. v. Thomas*, 342 Fed.Appx. 891 (4<sup>th</sup> Cir. 2009); *People v. Lavin*, 88 Cal.App.4th 609 (2001); *State v. Fay*, 763 So.2d 473 (Fla.App. 2000); *Comm. v. Tracy*, 737 N.E.2d 930 (Mass.App. 2000); *People v. Wilson*, 69 Cal.App.3d 631 (1977); *People v. Martin*, 765 P.2d 854 (Ut. 1988); *Comm. v. Lloyd*, 535 A.2d 1152 (Pa. 1988); *Johnson v. People* (Colo. 1997) 939 P.2d 817; *State v. Powell* (Tex.App. 1998) 971 S.W.2d 577; *State v. Bernard*, 678 S.W.2d 448 (Mo.App. 1984); *Eckard v. Comm.*, 460 S.E.2d 242 (Va.App. 1995); *Hines v. State*, 473 A.2d 1335 (Md.App. 1984); *State v. Bass*, 320 N.W.2d 824 (Iowa 1982); *People v. Rhoden*, 216 Cal.App.3d 1242 (1989); *Ellis v. Comm.*, 828 S.W.2d 360 (Ky. 1992); *Fields v. U.S.*, 698 A.2d 485 (D.C.App. 1997); *Parks v. State*, 43 So.3d 858 (Fla.App. 2010); *State v. Votta*, 299 S.W.3d 130 (Tex.App. 2009); *State v. Smith*, 882 N.E.2d 739 (Ind.App. 2008); *U.S. v. Martinez*, 198 Fed.Appx. 704 (10<sup>th</sup> Cir. 2006) [an oral request is insufficient to invoke the benefits of the IAD]; *State v. Votta*, 299 S.W.3d 130 (Tex. 2009) Cf. *State v. Barrett*, 945 N.E.2d 1070 (Ohio App. 2010); *People v. Harter*, 216

compliance with the IAD is required to trigger its protections.<sup>27</sup> When the prisoner signs the request for disposition of charges and asks that it be forwarded to the prosecutor, they expressly waive extradition to the receiving state for the purpose of trial on the outstanding charges. They also waive extradition *back* to the receiving state to serve any term of imprisonment imposed there, after their term in the sending state expires. (See Appendix L-1, Forms I & II.)

## **2. Duty of prison officials**

The prison officials have an important responsibility in seeing that the prisoner receives the protections intended under the IAD. First, they must notify the prisoner of the existence, location and nature of pending charges against them, and of their rights under the IAD with regard to those charges. (See Appendix L-1.)<sup>28</sup> Next, they must present the appropriate forms to the prisoner for their signature if they desire to request disposition of the charges. They must then promptly forward the request, along with the warden's certificate of the inmate's status and offer of temporary custody, to the prosecutor and court in the receiving state by certified or registered mail, return receipt required. (See Appendix L-1, Forms III, IV.)<sup>29</sup>

## **3. Duty of prosecutor**

The prosecutor in the jurisdiction where the charges are pending bears sole responsibility to see the requirements of the IAD are met in order to facilitate the temporary transfer of the prisoner and to assure the prisoner receives the protections contemplated by the IAD once triggered. The prosecutor also has the strongest interest in seeing that there is full compliance on their part *and* on the part of the prison officials. Some older

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P.3d 606 (Colo.App. 2009).

<sup>27</sup> Substantial compliance: *U.S. v. Johnson*, 196 F.3d 1000 (9th Cir. 1999); *People v. Wilson*, 69 Cal.App.3d 631 (1977); *State v. Roberts*, 427 So.2d 787 (Fla.App. 1983); *State v. Tarango*, 734 P.2d 1275 (N.M.App. 1987). Strict compliance: *U.S. v. Smith*, 696 F.Supp. 1381 (Or. 1988); *State v. Wells*, 673 N.E.2d 1008 (Ohio App. 1996); *State v. Roberson*, 897 P.2d 443 (Wash.App. 1995); *Clater v. State*, 467 S.E.2d 537 (Ga. 1996); *Palmer v. Williams*, 897 P.2d 1111 (N.M. 1995); *Jamison v. State*, 918 S.W.2d 889 (Mo.App. 1996); *State v. Somerlot*, 544 S.E.2d 52 (W.Va. 2000); *Lindley v. State*, 33 S.W.3d 926 (Tex.App. 2000); *State v. Blackburn*, 571 N.W.2d 695 (Wis.App. 1997); *State v. Moe*, 581 N.W. 2d 468 (N.D. 1998).

<sup>28</sup> *People v. Bentley*, 328 N.W.2d 389 (Mich. 1982); *Dotson v. State*, 463 N.E.2d 266 (Ind. 1984); *U.S. v. King*, 909 F.Supp. 369 (E.D.Va. 1995); *People v. Patton*, 775 N.W.2d 610 (Mich.App. 2009).

<sup>29</sup> *State v. Wells*, 453 A.2d 236 (N.J. 1982); *People v. Wilson*, 69 Cal.App.3d 631 (1977); *Fex v. Michigan*, 507 U.S. 43 (1993); *State v. Wells*, 673 N.E.2d 1008 (Ohio App. 1997); *State v. Dodson*, 221 P.3d 687 (Mont. 2009); *Parks v. State*, 43 So.3d 858 (Fla. 2010); *Clutter v. Commonwealth*, 322 S.W.3d 59 (Ky. 2010); *Carbaugh v. State*, 348 S.W.3d 871 (Mo. 2011).

cases have held that the consequences of the prison officials' noncompliance are visited upon the prosecutor, requiring dismissal under some circumstances.<sup>30</sup> However, the U.S. Supreme Court and most other courts have more recently held that a prosecutor who is not responsible for a violation of the IAD will not incur a dismissal when others have caused the violation.<sup>31</sup>

After receiving the request for disposition of charges, certificate of the inmate's status and offer of temporary custody, the prosecutor should immediately return to the institution their acceptance of the offer of temporary custody and forward the written authorization of an agent to act for the receiving state to the receiving state's Agreement Administrator. (See Appendix L-1.) When notified that all legal proceedings have concluded in the sending state, the prosecutor should send the authorized agent(s) to that state to take custody of the prisoner. *The prisoner must be brought to trial within 180 days of the time the prosecutor received the prisoner's request for disposition and accompanying documents.*<sup>32</sup> Following the conclusion of the proceedings, including sentencing or other disposition, the prosecutor should notify the institution and Agreement Administrator of the disposition and arrange for prisoner's return. (See Appendix L-1, Form IX.)

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<sup>30</sup> *People v. Wilson*, 69 Cal.App.3d 631 (1977); see also *State v. Braswell*, 481 A.2d 413 (Conn. 1984).

<sup>31</sup> *Fex v. Michigan*, 507 U.S. 43 (1993); *State v. Burks*, 631 N.W.2d 411 (Minn.App. 2001); *State v. Somerlot*, 544 S.E.2d 52 (W.Va. 2000); *Lindley v. State*, 33 S.W.3d 926 (Tex.App. 2000); *State v. Morris*, 892 P.2d 734 (Wash. 1995); *State v. Nearhood*, 518 N.W.2d 165 (Neb.App. 1994); *State v. Estes*, 883 P.2d 1335 (Or.App. 1994); *Comm. v. Gonce*, 466 A.2d 1039 (Pa. 1983); *Shumate v. State*, 449 So.2d 387 (Fla.App. 1984). But see, *U.S. v. Johnson*, 196 F.3d 1000 (9th Cir. 1999) Also, it should be noted that, despite noncompliance with the requirements of the IAD, when a prisoner makes a demand for a speedy trial upon the prosecutor, the latter is obliged to make a diligent, good-faith effort to bring the prisoner to trial as soon as possible. (*Smith v. Hooey*, 393 U.S. 374 (1969)); *State v. Simon*, 928 P.2d 449 (Wash.App. 1996); see also *State v. DeAngelis*, 658 A.2d 7 (R.I. 1995); *Gilmore v. State*, 655 N.E.2d 1225 (Ind. 1995).) Other constitutional and statutory speedy trial provisions are separate and distinct from the IAD. (*Reed v. Farley*, 512 U.S. 339 (1994); *Bentley v. Scully*, 851 F.Supp. 586 (S.D.N.Y. 1994); *Patterson v. State*, 885 S.W.2d 667 (Ark. 1994); *State v. Vaughn*, 865 P.2d 207 (Kan. 1993); *State v. Anderson*, 855 P.2d 671 (Wash. 1993).)

<sup>32</sup> *State v. Perry*, 64 A.3d 1030 (N.J. Super. 2013); *State v. Bury*, 2014 WL 1226933 (Mo.App. 2014); *Gibbs v. State*, 2012 WL 540774 (Mo. 2012); *Carbaugh v. State*, 348 S.W.3d 871 (Mo. 2011); *Cooper v. U.S.*, 28 A.3d 1132 (D.C. 2011); *U.S. v. Washington*, 596 F.3d 777 (10th Cir. 2010); *U.S. v. Brewington*, 512 F.3d 995 (7th Cir. 2008); *Carbaugh v. State*, 348 S.W.3d 871 (Mo. 2011); *State v. Merrick*, 219 S.W.3d 281 (Mo. 2007); *Usman v. State*, 2013 WL 4036468 (Tex.App. 2013).

## **B. Prosecutor's Request (Article IV)**

### **1. Duty of prosecutor**

Under Article IV of the IAD, the prosecutor in the jurisdiction where untried charges are pending may request temporary custody of an out-of-state prisoner for purposes of trial on those charges.<sup>33</sup> Before making the request, the prosecutor should confirm that their detainer has been lodged with the institution and that the prisoner has been notified of the detainer and the charges upon which it is based. To initiate the request, the prosecutor should prepare a request for temporary custody. (Appendix L-2, Form V.) Attached to the request should be certified copies of the complaint, information or indictment, the arrest warrant and identification documents such as physical description, photographs and fingerprint cards. The request must be signed by the prosecutor and certified by a judge in the jurisdiction where the charges are pending. Copies should be sent to the prisoner, the institution and the Agreement Administrator of the sending state (where the prisoner is incarcerated). The prosecutor and local judge should also retain a copy.

After receiving the warden's offer of temporary custody, the prosecutor should prepare and request the agent's authority as set forth above. Once the prisoner is brought to the receiving state, *they must be brought to trial within 120 days of their arrival*. Following sentencing, the prosecutor should notify the institution and Agreement Administrator of the disposition. (Appendix L-2, Form IX.)

### **2. Duty of prison officials**

The prison officials should notify the prisoner as soon as a detainer based on untried charges is lodged against them and advise them of their right to request deposition. (Appendix L-2, Form II.) Upon receipt of the prosecutor's request for temporary custody, the prison officials should prepare a certificate of the inmate's status and forward it to the prosecutor. (Appendix L-2, Form III.) After waiting 30 days to allow the Governor to intervene,<sup>34</sup> the officials should offer temporary custody of the prisoner following a pre-transfer hearing. (Appendix L-2, Form IV.)<sup>35</sup>

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<sup>33</sup> *State v. Welker*, 141 P.3d 8 (Wash. 2006); *State v. Gamble*, 563 S.E.2d 790 (W.Va. 2011).

<sup>34</sup> See *United States v. Pleau*, 680 F.3d 1, 6 (1st Cir. 2012).

<sup>35</sup> Even after receiving a prosecutor's request for temporary custody, it may be desirable for prison officials to again offer the prisoner the opportunity to request disposition by signing a Form II. This would eliminate the need for a pretransfer hearing and is a double waiver of extradition. If the prisoner does so, the prosecutor should immediately be advised and the request should be processed pursuant to Article III.

### 3. Pre-transfer hearing

Because a transfer under Article IV of the IAD is an *involuntary removal*, the United States Supreme Court has held that the prisoner is entitled to the same procedural due process protections that they would have if they were extradited under the UCEA, except that they did not insist on the issuance of a Governor's warrant. Essentially, this entitles the prisoner to a pre-transfer hearing similar to the arraignment which would be held under the UCEA, section 10.<sup>36</sup> In most counties where state correctional institutions are located, the district attorney's office is notified of the need for a pre-transfer IAD hearing; these are frequently conducted in conjunction with extradition hearings, which are similar in nature. However, the appropriate documents are furnished by the correctional institution, rather than by the local law enforcement agency. At the hearing counsel should be appointed and the judge should inform the prisoner of the request for temporary custody, the crime with which they are charged and determine the prisoner's identity as the person charged. The district attorney represents the interest of receiving (requesting) state.

### 4. Defenses to Transfer

Prisoners whose temporary custody is sought under Article IV of the IAD may challenge their transfer by way of habeas corpus. The issues which may be raised on habeas corpus are (1) identity, (2) whether the prisoner is charged in the receiving state, and (3) whether the papers are in order.<sup>37</sup> Essentially, the same presumption of regularity, burdens of proof and rules of evidence apply in these proceedings as in extradition habeas corpus cases.<sup>38</sup> After all court proceedings have concluded, and at least 30 days have passed from the receipt of the request, the warden should offer temporary custody to the prosecutor. (Appendix L-2, Forms III, IV.)

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<sup>36</sup> See *Culyer v. Adams*, 449 U.S. 433 (3rd Cir. 1981); *In re Garcia*, 984 A.2d 506 (Pa. Super. 2009); *Pharm v. Bartow*, 727 N.W.2d 1 (Wis. 2007); (*Comm. v. Carter*, 478 A.2d 1286 (Pa. 1984); *Wilkett v. State*, 753 P.2d 383 (Ok. 1988); *Sorenson v. United States*, 539 F. Supp. 865 (S.D.N.Y. 1982).) Similarly, prisoners in other non-UCEA jurisdictions (e.g., Mississippi, Super. 2009); *Pharm v. Bartow*, 727 N.W.2d 1 (Wis. 2007); (*Comm. v. Carter*, 478 A.2d 1286 (Pa. 1984); *Wilkett v. State*, 753 P.2d 383 (Ok. 1988); *Sorenson v. United States*, 539 F. Supp. 865 (S.D.N.Y. 1982).) Similarly, prisoners in other non-UCEA jurisdictions (e.g., Mississippi, North Dakota and South Carolina) would presumably not be entitled to such a hearing.

<sup>37</sup> *Statchuk v. Warden*, 455 A.2d 1000 (Md.App. 1983); "Fugitivity" is not a required element under the IAD, as it is under the extradition law. (18 U.S.C. § 3182; UCEA § 3) Therefore, this is not an issue which can be raised to defeat a transfer under Article IV of the IAD. *But see Blakely v. Dist. Ct.*, 755 P.2d 1380 (Mont. 1988).

<sup>38</sup> See *Statchuk v. Warden*, 455 A.2d 1000 (Md. 1983).

## 5. Governor's Role

The IAD was intended to provide an administrative substitute for formal extradition proceedings so as to facilitate the prompt disposition of pending criminal charges against prisoners. Thus, the IAD expressly eliminates the requirement that the Governor issue a rendition warrant to accomplish a transfer. (Art. IV, subd. (d).)<sup>39</sup>

The IAD does provide that the prison officials must wait 30 days after receiving a request or temporary custody before acting upon it to allow the sending state's Governor to disapprove the request. However, the provision does not require a review of every case by the Governor's office similar to what occurs in extradition cases.<sup>40</sup> Also, the Governor is not required to affirmatively act within the 30 days. Once it has elapsed without the Governor's disapproval of the request, the prisoner may be transferred.<sup>41</sup>

Please note, however, 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. Nevada requires this due to a Nevada Supreme Court ruling, *State v. Blum*, 98 Nev. 40, 639 P.2d 559 (1982). A sample of the Nevada requirement can be found in Appendix L-3.

**NOTE:** It is not clear whether a prisoner can deliver a request for disposition (Form II) under Article III of the IAD *after* a prosecutor has already initiated a request for temporary custody under Article IV. Some argue that once the IAD procedures have been initiated, under either Article III or Article IV, it cannot thereafter be "converted" by either the prisoner or the prosecutor.<sup>42</sup> However, it is questionable whether a prosecutor can foreclose a prisoner's protections under Article III by sending a request under Article IV which may not be acted upon for a long period of time. Further, there are definite *advantages* to the prison authorities and prosecutor when the prisoner submits a Form II, such as a "double" extradition waiver and no pretransfer court hearing. Despite this uncertainty, some states allow an Article IV request to be converted into an Article III request. (See Appendix L-1.)

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<sup>39</sup> See *In re App. of Morris*, 563 F.Supp. 128 (D.C.N.C. 1983). Nevada requires that before its state prison will honor a request for temporary custody from a prosecutor from another state, the request be approved by the Governor of the requesting (receiving) state. (*Housewright v. Lefrak*, 669 P.2d 711 (Nev. 1983); *Director v. Blum*, 639 P.2d 559 (Nev. 1982); see also *Hudson v. Moran*, 760 F.2d 1027 (9th Cir. 1985).) Whenever an Agreement Administrator processes a request to Nevada, they should add, "under authorization from the Governor," the executive approval required by Nevada.

<sup>40</sup> *State ex rel. Young v. Rose*, 670 S.W.2d 238 (Tenn. 1984).

<sup>41</sup> When the United States is the sending "state," the 30-day waiting period may still apply; if so the U.S. Attorney General is the executive authority who must deny the request. (*Lopez v. Levi*, 422 F.Supp. 846 (S.D.N.Y. 1976).)

<sup>42</sup> See *State v. Willoughby*, 927 P.2d 1379 (Haw.App. 1996); *Shewan v. State*, 396 So.2d 1133 (Fla.App. 1980).

## C. Trial after Transfer

The purpose of a temporary transfer of custody under the IAD is to dispose of outstanding criminal charges. The prisoner should remain in the receiving state until the trial proceedings, including sentencing, are concluded. However, they should not remain during the pendency of any appeal from their conviction.

### 1. Time for Trial

- a) Where the transfer of custody was at the request of the prisoner under Article III, they must be brought to trial *within 180 days of the prosecutor receiving the appropriate documents*.<sup>43</sup> This requirement is not satisfied if only the preliminary examination occurs within the time limit; the trial itself must commence.<sup>44</sup> Also, the prosecutor cannot avoid the IAD time constraint by dismissing the case and refile the same charges.<sup>45</sup> However, the state can amend or add charges after the request for disposition is made, and new charges are not subject to the IAD.<sup>46</sup>

### b) Article IV Transfers

Where the transfer of custody was at the request of the prosecutor under Article IV, the prisoner *must be brought to trial within 120 days* from their arrival in the receiving state.<sup>47</sup>

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<sup>43</sup> *Fex v. Michigan*, 507 U.S. 43 (1993); *U.S. v. Washington*, 596 F.3d 777 (10th Cir. 2010); *U.S. v. Brewington*, 512 F.3d 995 (7th Cir. 2008); *State v. NMN Wells*, 638 N.W.2d 456 (Minn.App. 2002); *McNelson v. State*, 990 P.2d 1263 (Nev. 1999); *State v. Treece*, 497 S.E.2d 124 (N.C.App. 1998); *Wright v. Comm.*, 953 S.W.2d 611 (Ky.App. 1997); *Comm. v. Boyd*, 679 A.2d 1284 (Pa. 1996); *State v. Rodriguez*, 927 P.2d 463 (Kan. 1996); *Jamison v. State*, 918 S.W.2d 889 (Mo.App. 1996); *Birdwell v. Skeen*, 983 F.2d 1332 (5th Cir. 1992); *State v. Walton*, 734 S.W.2d 502 (Mo. 1987); *Henager v. State*, 716 P.2d 669 (Ok. 1986); *State v. Soule*, 379 N.W.2d 762 (Neb. 1986). See also *State v. Braswell*, 481 A.2d 413 (Conn. 1984); *U.S. v. Dawn*, 900 F.2d 1132 (7th Cir. 1990); *U.S. v. Espinoza*, 841 F.2d 326 (9th Cir. 1988); *Comm. v. Martens*, 500 N.E.2d 282 (Mass. 1986); *Fisher v. State*, 357 S.W.3d 115 (Tex. 2011).

<sup>44</sup> *State ex rel. Kemp v. Hodge*, 629 S.W.2d 353 (Mo. 1982); *People v. Jones*, 482 N.W.2d 207 (Mich.App. 1992).

<sup>45</sup> See *People v. Christensen*, 465 N.E.2d 93 (Ill. 1984); *People v. C'Allah*, 474 N.Y.S.2d 305 (N.Y. 1984); *State v. Shaw*, 651 P.2d 115 (N.M. 1982). However, where multiple counts are severed for trial, it is required that only the first trial commence within the time limit. (See *Dobson v. United States*, 449 A.2d 1082 (D.C. 1982).) Also, if a mistrial occurs during the first trial, a new period under the IAD begins for purposes of the retrial. (See *State v. Green*, 680 S.W.2d 474 (Tenn. App. 1984).)

<sup>46</sup> *State v. Robbins*, 32 P.3d 171 (Kan. 2001); *People v. Oiknine*, 79 Cal.App.4th 21 (1999); *People v. Garcia*, 17 P.3d 820 (Colo.App. 2000).

<sup>47</sup> *Sweeney v. State*, 704 N.E.2d 86 (Ind. 1998); *People v. Zetsche*, 188 Cal.App.3d 917 (1987); *People v. Meyers*, 311 N.W.2d 454 (Mich.App. 1981); *O'Connell v. State*, 400 So.2d 136 (Fla.App.



**NOTE:** A question arises as to which time limitation applies where a prisoner has submitted a Form II after the prosecutor has initiated the IAD procedures under Article IV. It has been held that the time limitation is controlled by which party first initiated the IAD procedures.<sup>48</sup>

## 2. Tolling of Time Period

The time period within which trial must commence under either Article III or Article IV of the IAD may be tolled under certain circumstances. For example, both Articles provide that the time for trial may be extended if, for good cause shown, the trial court grants a continuance.<sup>49</sup> “Good cause” has been found for reasons such as the unavailability of the trial judge,<sup>50</sup> higher priority for another trial<sup>51</sup> and pretrial motions by or for the benefit of the defendant and/or their counsel.<sup>52</sup> A motion for continuance must be made

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1981); *State v. Stilling II*, 770 P.2d 137 (Utah 1989).

<sup>48</sup> *State v. Willoughby*, 927 P.2d 1379 (Haw.App. 1996); *Shewan v. State*, 396 So.2d 1133 (Fla.App. 1980); *State v. Almly*, 162 P.3d 680 (Ariz.App. 2007); *Matthews v. Commonwealth*, 168 S.W.3d 14 (Ky. 2005). But see *Ullery v. State*, 988 P.2d 332 (Ok.App. 1999).

<sup>49</sup> *U.S. v. Ellerbe*, 372 F.3d 462 (D.C. Cir. 2004); *Com. v. Horne*, 2014 WL 1266799 (Pa. Super. 2014); *King v. Brown*, 8 F.3d 1403 (9th Cir. 1993); *State v. Waldrup*, 263 P.3d 867 (Kan. 2011); *State v. Rieger*, 695 N.W.2d 678 (Neb. 2005); *Netzley v. Superior Court*, 160 Cal.App.4th 348 (Cal. 2008); *Headrick v. State*, 816 So.2d 517, 525 Ala.Crim.App. 2001); *Elliotte v. State*, 515 A.2d 677 (Del. 1986); *People v. Posten*, 108 Cal.App.3d 633, 641 (1980); *Dillon v. State*, 844 S.W.2d 139 (Tenn. 1992); *State v. Rose*, 604 A.2d 24 (Me. 1992); *Ricks v. State*, 419 S.E.2d 517 (Ga.App. 1992); *Petrack v. State*, 832 S.W.2d 767 (Tex.App. 1992); *Kenneth-Smith v. State*, 838 S.W.2d 113 (Mo.App. 1992); *State v. Livernois*, 934 P.2d 1057 (N.M. 1997); *State v. Clifton*, 777 A.2d 1272 (R.I. 2001); *McCay v. McKay*, 431 F.3d 1085 (8th Cir. 2005); *State v. Townsend*, 722 N.W.2d 753 (Wisc. 2006).

<sup>50</sup> *People v. Watson*, 650 P.2d 1340 (Colo. 1982); *State v. Aaron*, 692 P.2d 1336 (N.M. 1984).

<sup>51</sup> *State v. Rodriguez*, 927 P.2d 463 (Kan. 1996); *Comm. v. Dickson*, 434 N.E.2d 1284 (Mass. 1982); cf. *State v. Gipson*, 670 S.W.2d 637 (Tenn. 1984); *Comm v. Petrozziello*, 491 N.E.2d 627 (Mass.App. 1986).

<sup>52</sup> *U.S. v. Diaz*, 176 F.3d 52 (2nd Cir. 1999); *U.S. v. Ellerbe*, 372 F.3d 462 (D.C. Cir. 2004); *State v. Oliver*, 68 A.3d 549 (R.I. 2013); *State v. Nelson*, 8 A.3d 40 (N.H. 2010); *Netzley v. Superior Court*, 160 Cal.App.4th 348 (Cal. 2008); *Comm. v. Montione*, 720 A.2d 738 (Pa. 1998); *People v. Williams*, 720 N.Y.S.2d 653 (N.Y. 2000); *State v. Sprague*, 771 A.2d 583 (N.H. 2001); *State v. Powell*, 971 S.W.2d 577 (Tex.App. 1998); *People v. Ortiz*, 731 N.E.2d 937 (Ill.App. 2000); *State v. Miller*, 691 A.2d 377 (N.J. 1997); *People v. Reid*, 627 N.Y.S.2d 234 (1995); *State v. Moore*, 882 S.W.2d 253 (Mo.App. 1994); *State v. Johnson*, 526 N.W.2d 279 (Wis.App. 1994); *State v. Batungbacal*, 913 P.2d 49 (Haw. 1996); *People v. Posten*, 108 Cal.App.3d 633, 641 (1980); *Comm. v. Diggs*, 482 A.2d 1329 (Pa. 1984); *State v. Shaw*, 651 2d 115 (N.M. 1982); *People v. Paulus*, 320 N.W.2d 337 (Mich. 1982); *State v. Aguero*, 791 N.W.2d 1 (N.D. 2010); *U.S. v. Fisher*, 193 Fed.Appx. 790 (10th Cir. 2006); *U.S. v. Winters*, 2010 WL 1286743 (8th Cir.2010); *State v. Brown*, 953 A.2d 1174 (N.H. 2008); cf. *State v. Soule*, 379 N.W.2d 762 (Neb. 1986); *State v. Grant*, 738 P.2d 106 (Mont. 1987); *United States v. Nesbitt*, 852 F.2d 1502 (7th Cir. 1988); *State v. Rose*, 604 A.2d 24 (Me. 1992); *State v. Shatney*, 572 A.2d 872 (R.I. 1990); *Comm. v. Corbin*, 519 N.E.2d 1367 (Mass. 1988); *U.S. v. Johnson*, 953 F.2d 1167 (9th Cir. 1992). But

in open court in the presence of the defendant and/or their counsel.<sup>53</sup> Also, the period is tolled during any time that the defendant is “unable to stand trial.”<sup>54</sup>

### 3. Trial by Sister County

A prisoner who seeks a transfer under Article III is deemed to be requesting disposition of *all* charges in the prosecuting state *on which detainers have been lodged*. (See Art. III, subd. (d)). The warden must notify all jurisdictions in the receiving state which lodged detainers of a prisoner’s request for disposition of any of the charges. (*Id.*) Failure to bring the prisoner to trial on charges of a sister county which also lodged a detainer before their return will result in dismissal of those charges.<sup>55</sup> Likewise, the IAD appears to permit prosecution by a sister county which lodged a detainer following an Article IV transfer.<sup>56</sup>

However, Article V, subdivision (d), seems to preclude trial in a sister county which has not lodged a detainer.<sup>57</sup> A contrary argument could be made on two issues. First, despite an apparent violation of the provision of the IAD, the sister county would not be without jurisdiction to prosecute the prisoner.<sup>58</sup> The general rule is that the manner by which an accused is brought before the court has no bearing on the jurisdiction of the court in a

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cf. *Gallimore v. State*, 944 P.2d 939 (Okla.App. 1997); *State v. Willoughby*, 927 P.2d 1379 (Haw.App. 1996); *State v. Carrasquillo*, 2009 WL 510319 (N.J. Super. 2009).

<sup>53</sup> *U.S. v. Crozier*, 259 F.3d 503 (6th Cir. 2001); *Kirvin v. State*, 2011 WL 1818420 (Tex. 2011); *Holloman v. State*, 675 S.W.2d 351 (Tex.App. 1984); *Dillon v. State*, 844 S.W.2d 139 (Tenn. 1992).

<sup>54</sup> *State v. Pair*, 416 Md. 157 (Md. 2010); *State v. Cook*, 750 A.2d 91 (Pa. 2000); *Johnson v. Commissioner*, 758 A.2d 442 (Conn.App.2000); *People v. Whitely*, 539 N.Y.S.2d 652 (1989); *U.S. v. Roy*, 771 F.2d 54 (2d Cir. 1985); *State v. Binn*, 506 A.2d 67 (N.J. 1986) [same]; *State v. Miller*, 691 A.2d 377 (N.J. 1997); *Vaden v. State*, 712 N.E.2d 522 (Ind.App. 1999); *State v. Rodriguez*, 927 P.2d 463 (Kan. 1996); *Comm. v. Woods*, 663 A.2d 803 (Pa. 1995); *Patterson v. State*, S.W.2d 667 (Ark. 1994) 885; *State ex rel. Tryon v. Mason*, 679 S.W.2d 268 (Mo. 1984); *People v. Posten*, 108 Cal.App.3d 633 (1980); *People v. Lambert*, 459 N.Y.S.2d 120 (N.Y. 1983); *State v. Minnick*, 413 So.2d 168 (Fla. 1982); *Comm. v. Petrozziello*, 491 N.E.2d 627 (Mass.App. 1986); *People v. Vrlaku*, 533 N.E.2d 1053 (N.Y. 1988); *Hendrick v. State*, 816 So.2d 517 (Ala.App. 2001); *Ullery v. State*, 988 P.2d 332 (Okla.App. 1999); *State v. Vonbehren*, 777 N.W.2d 48 (Minn.Ct.App. 2010); *Sackman v. State*, 277 S.W.3d 304 (Mo.Ct.App. 2009); *Swanigan v. U.S.*, 853 A.2d 742 (D.C.Cir. 2004).

<sup>55</sup> See *State v. Wiggins*, 425 So.2d 621 (Fla. App. 1983).

<sup>56</sup> See *Selph v. Buckallew*, 805 P.2d 1106 (Colo. 1991).

<sup>57</sup> Subdivision (d) of Article V states, in part: “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.”

<sup>58</sup> See *Brown v. District Court*, 571 P.2d 1091 (Colo. 1977).

criminal proceeding.<sup>59</sup> The IAD itself provides no remedy for a violation of this provision.

Second, the purposes of the IAD as set forth previously in this chapter would seem to be consistent with a trial in the sister county, even though no detainer had been previously lodged, rather than returning the inmate to prison, then transferring them again for trial in the sister county. Both practical and policy considerations militate in favor of trial in the sister county before return.<sup>60</sup>

**NOTE:** A sister county in the receiving state which had not previously lodged a detainer with the institution could do so while the prisoner is undergoing trial in the first county. A subsequent prosecution could then go forward under the provisions mentioned above.

#### **4. Anti-shuttling**

Articles III and IV both contain “anti-shuttling” provisions. Essentially identical, they provide:

“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.”<sup>61</sup>

The United States Supreme Court has held that even a “de Minimis” (slight or trifling) violation of the anti-shuttling provision requires dismissal.<sup>62</sup>

**Therefore, a strict interpretation of the anti-shuttling provision applies.**<sup>63</sup>

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<sup>59</sup> See *Frisbie v. Collins*, 342 U.S. 519 (10th Cir. 1952).

<sup>60</sup> See *Comm. v. Boyd*, 679 A.2d 1284 (Pa. 1996). Prosecutors or other officials should be wary of violating a statute to the “detriment” of a prisoner, however. While the violation may not provide a defense to the criminal action, it could possibly create a civil cause of action. See, e.g., *Ricks v. Sumner*, 647 F.2d 76 (9th Cir. 1981); *Bush v. Muncy*, 659 F.2d 402 (4th Cir. 1981).

<sup>61</sup> Article III, subdivision (d), and Article IV, subdivision (e).

<sup>62</sup> *Alabama v. Bozeman*, 533 U.S. 146 (2001). See also *Marshall v. Superior Court*, 183 WL 4279960 (2008). Cf. *Pethel v. McBride*, 638 S.E.2d 727 (W.Va. 2006); *U.S. v. Knight*, 2009 WL 764999 (11th Cir. 2009).

<sup>63</sup> *In re Dacus*, 337 S.W.3d 501 (Tex. 2011); *Halle v. State*, 914 So.2d 470 (Fla. 2005). Cf. *U.S. v. Pursley*, 474 F.3d 757 (10th Cir. 2007); *State v. Robinson*, 182 S.W.3d 747 (Mo. 2006); *Reyes v. People*, 195 P.3d 662 (Colo. 2008); *Lewis v. Thaler*, 528 Fed.Appx. 845 (Colo. 2013); *State v. Thomas*, 2013 WL 3982655 (Ohio App. 2013); *U.S. v. Macomber*, 717 F.3d 607 (8th Cir. 2013).

The anti-shuttling clause may not be invoked to allow an inmate to dictate in what order they will serve multiple sentences.<sup>64</sup>

## **5. Return to Receiving State to Serve Sentence**

Following their trial in the receiving state, the prisoner is to be returned to the sending state “at the earliest practicable time.” (Art. V, par. (e).) After completing their term of imprisonment in the sending state, if the prisoner has an unfinished sentence in the receiving state *they should be extradited* to that state to complete that sentence if the transfer was under Article IV.

**NOTE:** If the IAD transfer was at the *prisoner’s* request, under Article III, paragraph (e), prisoner has waived extradition back to the receiving state to serve their sentence by signing the Form II.

### **D. Remedies for Violations of IAD**

#### **1. Dismissal**

The IAD provides specifically for the remedy of dismissal for only two types of violations: (a) failure to bring the prisoner to trial within the applicable time period (Art. V, par. (c))<sup>65</sup>; and (b) failure to bring the prisoner to trial before their return to the sending state (Art. III, par. (d); Art. IV, par. (e)). There is no remedy provided for other types of violations.<sup>66</sup> Dismissal must be ordered by the court of the receiving state, since the sending state has no jurisdiction over the pending charges.<sup>67</sup> The sending state’s courts may, however, quash the detainers based upon those charges if they determine a violation has occurred.<sup>68</sup> Even after a detainer is

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<sup>64</sup> *Pitsonbarger v. Gramley*, 141 F.3d 728 (7th Cir. 1998); *New York v. Poe*, 835 F.Supp. 585 (E.D.Okla. 1993) [no standing]; *State v. Thornton*, 929 P.2d 676 (Ariz. 1996); see also *Dunn v. Keohane*, 14 F.3d 335 (7th Cir. 1994).

<sup>65</sup> *State v. Pair*, 416 Md. 157 (Md. 2010); *State v. Barrett*, 945 N.E.2d 1070 (Ohio 2010); *State v. Carrasquillo*, 2010 WO 532784 (N.J. 2010); *State v. Merrick*, 219 S.W.3d 281 (Mo. 2007); *Comm. v. Davis*, 786 A.2d 173 (Pa. 2001); *Pinto v. Comm. Of Correction*, 768 A.2d 456 (Conn.App. 2001); *People v. Brooks*, 189 Cal.App.3d 866 (1987); *United States v. Smith*, 696 F.Supp. 1381 (D.Or. 1988); *State v. Olsen*, 540 N.W.2d 149 (N.D. 1995). *People v. Brooks*, 189 Cal.App.3d 866 (1987); *United States v. Smith*, 696 F.Supp. 1381 (D. Ore. 1988).

<sup>66</sup> See *U.S. v. Lualemaga*, 280 F.3d 1260 (9th Cir. 2002); *U.S. v. Walker*, 255 F.3d 540 (8th Cir. 2001); *Netzley v. Superior Court*, 160 Cal.App.4th 348 (2008); *Odhinn v. State*, 82 P.2d 715 (Wyo. 2003).

<sup>67</sup> *Freeman v. Hand*, 974 P.2d 788 (Ore.App. 1999); *In re Fabricant*, 118 Cal.App.3d 115 (1981); *State ex rel. Bursaw v. Omodt*, 338 N.W.2d 585 (Minn. 1983); *Remick v. Lopes*, 525 A.2d 502 (Conn. 1987); *Comm. v. Clutter*, 615 A.2d 362 (Pa. 1992); *Dodson v. Cooper*, 705 P.2d 500 (Colo. 1985); *Walker v. McCormick*, 858 P.2d 373 (Mont. 1993).

<sup>68</sup> *People v. Jellicks*, 455 N.Y.S.2d 327 (N.Y. 1982); *People ex rel. Albuquerque v. Ward*, 455 N.Y.S.2d 1002 (N.Y. 1982); *Remick v. Lopes*, 525 A.2d 502 (Conn. 1987); *Hickey v. State*, 349 W.2d

quashed, however, the receiving state may seek extradition when the prisoner is released.<sup>69</sup> Under the strict interpretation given by the Supreme Court, the prisoner need not show prejudice to be entitled to a dismissal.<sup>70</sup> However, dismissal of state charges for violation of the IAD does not preclude federal prosecution.

## **2. Inconsequential Violations**

Violations of the IAD for which no remedy is provided by the agreement itself will not affect the prosecution of the pending charges, at least in the absence of prejudice to the prisoner.<sup>71</sup> For example, the failure of the sending state to provide the prisoner with a pre-transfer hearing will have no effect on the criminal prosecution.<sup>72</sup> Overnight housing of the prisoner in a local county jail while undergoing a federal trial, while a technical violation, is a “trifling and insignificant” one, not requiring dismissal.<sup>73</sup> Likewise, beginning the prisoner’s trial on the 181st day after their request was received by the prosecutor was held not an “abuse of discretion.”<sup>74</sup>

## **3. Civil Liability**

As noted above, even where no remedy is provided as against the criminal charges, a violation of the IAD may result in possible civil liability on the part of the responsible official(s).<sup>75</sup>

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772 (Iowa App. 1984).

<sup>69</sup> *People ex rel. Kinkade v. Finnerty*, 490 N.Y.S.2d 420 (1985); *Dunn v. Hindman*, 855 P.2d 994 (Kan.App. 1993).

<sup>70</sup> *Alabama v. Bozeman*, 533 U.S. 146 (2001); see also *Gallimore v. State*, 944 P.2d 939 (Okla.App. 1997); *State v. Sephus*, 32 S.W.3d 369 (Tex.App. 2000).

<sup>71</sup> See *People v. Zetsche*, 188 Cal.App.3d 917 (1987); *Comm. v. Grant*, 634 N.E.2d 565 (Mass. 1994); *Cooney v. Fulcomer*, 886 F.2d 41 (3rd Cir. 1989); *Parker v. U.S.*, 590 A.2d 504 (D.C.App. 1991); *Wilkett v. State*, 753 P.2d 383 (Ok. 1988); *U.S. v. Wison*, 737 F.Supp. 599 (D.Nev. 1990).

<sup>72</sup> *State v. Moss*, 376 S.E.2d 569 (W.Va. 1988); *United States v. Fulford*, 825 F.2d 3 (3rd Cir. 1987); *State v. Brown*, 348 N.W.2d 593 (Wis. 1984); *Watson v. Dupnik*, 626 P.2d 622 (Ariz.App. 1981); *Johnson v. Warden*, 591 A.2d 407 (Conn. 1991); *Shack v. A.G. of Pa.*, 776 F.2d 1170 (3rd Cir. 1985).

<sup>73</sup> *United States v. Roy*, 597 F.Supp. 1210 (D.C.Conn. 1984); *U.S. v. Johnson*, 953 F.2d 1167 (9th Cir. 1992). See *United States v. Taylor*, 173 F.3d 538 (6th Cir. 1999).

<sup>74</sup> *State v. Green*, 680 S.W.2d 474 (Tenn. App. 1984).

<sup>75</sup> *Ricks v. Sumner*, 647 F.2d 76 (9th Cir. 1981); *Crenshaw v. Checchia*, 668 F.Supp. 443 (E.D. Pa. 1987); Cf. *Chapman v. Guessford*, 924 F.Supp. 30 (D.Del. 1996).

## **E. Protections of IAD Unavailable**

### **1. State not a Party**

For its provisions to apply, the sending state and the receiving state must have adopted the IAD.<sup>76</sup> (As previously noted, Mississippi and Louisiana are not parties to the IAD.)

### **2. Waiver by Defendant's Actions**

The prisoner may waive their protections under the IAD by their conduct in the receiving state. It is generally the case that a plea of guilty to the charges in the receiving state waives any violation of the IAD.<sup>77</sup> The contrary may be true if the issue is specifically preserved at the time of the plea.<sup>78</sup> Similarly, if the defendant requests treatment which would be in violation of the IAD, they may waive its protections.<sup>79</sup> Such a waiver need only be

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<sup>76</sup> *State v. McCabe*, 420 So.2d 955 (La. 1982); *State v. Lee*, 626 S.W.2d 252 (Mo. 1982); *Maggard v. Wainwright*, 411 So.2d 200 (Fla. App. 1982); *United States v. Dixon*, 592 F.2d 329 (6th Cir. 1979); *Robinson v. United States*, 580 F.2d 783 (5th Cir. 1978); see also *People v. Messer*, 276 Cal.App.2d 300 (1969); *Gillard v. State*, 486 So.2d 1323 (Ala. App. 1986); *Yellen v. Cooper*, 828 F.2d 1471 (10th Cir. 1987).

<sup>77</sup> *Gibbs v. State*, 359 S.W.3d 529 (Mo.App. 2012); *State v. Nelson*, 161 N.H. 58 (N.H. 2010); *Roskie v. Com.*, 296 S.W.3d 436 (Ky. 2009); *Carbaugh v. State*, 348 S.W.3d 871 (Mo. 2011); *Schmidt v. State*, 292 S.W.3d 574 (Mo. 2009); *Eaton v. State*, 626 N.W.2d 676 (N.D. 2001); *State v. Norton*, 7 S.W.3d 459 (Mo.App. 1999); *Ex parte Sanchez*, 918 S.W.2d 526 (Tex. App. 1996); *Beachem v. A.G. of Mo.*, 808 2d 1303 (8th Cir. 1987); *Hudson v. Moran*, 760 F.2d 1027 (9th Cir. 1985); *People v. Crossen*, 485 N.Y.S.2d 189 (N.Y. 1985); *Sherman v. State*, 693 P.2d 1071 (Id. 1984); *Watson v. Dupnik*, 626 P.2d 622 (Ariz.App. 1981); *United States v. Palmer*, 574 F.2d 164 (3rd Cir. 1978); *United States v. Hobson*, 686 F.2d 628 (8th Cir. 1982); *Reyes v. People*, 195 P.3d 662 (Colo. 2008); *State v. Tucker*, 656 S.W.2d 403 (S.C.App. 2008). To the contrary is *People v. Office*, 337 N.W.2d 592 (Mich.App. 1983), but called into doubt by *People v. Wantly*, 471 N.W. 2d 922, 923 (Mich.App. 1991); *Monroe v. State*, 978 So.2d 177 (Fla. 2007).

<sup>78</sup> *In re Brooks*, 189 Cal.App.3d 866 (1987); *People v. Reyes*, 98 Cal.App.3d 524 (1979); *People v. C'Allah*, 474 N.Y.S.2d 305 (1984); *People v. Cella*, 114 Cal.App.3d 905 (1981).

<sup>79</sup> *New York v. Hill*, 528 U.S. 110 (2000); *State v. Nelson*, 8 A.3d 40 (N.H. 2010); *Roskie v. om.*, 296 S.W.3d 436 (Ky.App. 2009); *Schmidt v. State*, 292 S.W.3d 574 (Mo.App. 2009); *Monroe v. State*, 978 So.2d 177 (Fla.App. 2007); *State v. Onapolis*, 541 S.E.2d 611 (W.Va. 2000); *State v. Nonahal*, 626 N.W.2d 1 (Wis.App. 2001); *State v. Fuller*, 560 N.W.2d 97 (Minn.App. 1997); *Ward v. Comm.*, 62 S.W.3d 399 (Ky.App. 2001); *State v. Schmidt*, 932 P.2d 328 (Haw.App. 1997); *People v. Reid*, 627 N.Y.S.2d 234 (1995); *People v. Williams*, 194 Cal.App.3d 124 (1987); *People v. Sampson*, 191 Cal.App.3d 1409 (1987); *Brown v. Wolff*, 706 F.2d 902 (9th Cir. 1983); *Dillman v. State*, 411 So.2d 964 (Fla. 1982); *State v. Grizzell*, 399 So.2d 1091 (Fla.App. 1981); *United States v. Oldaker*, 823 F.2d 778 (4th Cir. 1987); *State v. Dorsett*, 344 S.E.2d 342 (N.C. 1986); *State v. Edwards*, 509 So.2d 1161 (Fla. App. 1987); *Moon v. State*, 375 S.E.2d 442 (Ga. 1988); *People v. Nitz*, 219 Cal.App.3d 164 (1990); *Drescher v. Superior Court*, 218 Cal.App.3d 1140 (1990); *Gray v. Benson*, 608 F.2d 825 (10th Cir.

voluntary, not “knowing and intelligent.”<sup>80</sup> In fact, the mere failure to object in the trial court to alleged violations will usually be considered a waiver of those claims.<sup>81</sup>

### 3. Transfer by Other Method

The provisions of the IAD only apply where the transfer of custody is accomplished by way of the IAD. There are other methods by which to temporarily transfer custody of a prisoner for the purpose of trial in another jurisdiction. When one of these methods is used, the IAD provisions do not apply. Thus, where extradition with an accompanying executive agreement is used, the IAD does not apply.<sup>82</sup> Likewise, if the transfer is made under the authority of a writ of habeas corpus ad prosequendum or ad testificandum, the IAD does not apply.<sup>83</sup>

However, where a detainer had been lodged, some courts have held a later writ of habeas corpus ad prosequendum to trigger the protections of the IAD.<sup>84</sup>

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1979).

<sup>80</sup> *United States v. Lawson*, 736 F.2d 835 (2d Cir. 1984); *People v. Moody*, 676 P.2d 691 (Colo. 1984); *Yellen v. Cooper*, 828 F.2d 1471 (10th Cir. 1987); *People v. Nitz*, 219 Cal.App.3d 164 (1990); *Drescher v. Superior Court*, 218 Cal.App.3d 1140 (1990); *People v. Sampson*, 191 Cal.App.3d 1409 (1987).

<sup>81</sup> *Sipe v. State*, 690 N.E.2d 779 (Ind.App. 1998); *Drescher v. Superior Court*, 218 Cal.App.3d 1140 (1990); *People v. Rhoden*, 216 Cal.App.3d 1242 (1989); *People v. Sampson*, 191 Cal.App.3d 1409 (1987); *Mars v. United States*, 615 F.2d 704 (6th Cir. 1980); *Williams v. State*, 533 N.E.2d 1193 (Ind. 1989); *People v. Moody*, 676 P.2d 691 (Colo. 1984); *Johnson v. State*, 442 So.2d 193 (Fla. 1983); *Reid v. State*, 670 N.E.2d 949 (Ind.App. 1996); *State v. Harper*, 508 N.W.2d 584 (Neb. 1993). But see *State v. Edwards*, 509 So.2d 1161 (Fla.App. 1987); *Snyder v. State*, 738 P.2d 1303 (Nev. 1987); *State v. Lionberg*, 533 A.2d 1172 (R.I. 1987). (See *Reed v. Farley*, 512 U.S. 339 (1994).

<sup>82</sup> *People v. Quackenbush*, 687 P.2d 448 (Colo. 1984); see also *Giardino v. Bourbeau*, 475 A.2d 298 (Conn. 1984); *Comm. v. Wilson*, 504 N.E.2d 1060 (Mass. 1987); *Drescher v. Superior Court*, 218 Cal.App.3d 1140 (1990). Also, if the IAD transfer itself is modified by an executive agreement, the IAD provisions so modified do not apply. (*Pitsonbarger v. Gramley*, 141 F.3d 728 (7th Cir. 1998).)

<sup>83</sup> *Stewart v. Bailey*, 7 F.3d 384 (4th Cir. 1993); *Winningham v. State*, 765 S.W.2d 724 (Mo.App. 1989); *United States v. Moore*, 822 F.2d 35 (8th Cir. 1987); *United States v. Bamman*, 737 F.2d 413 (4th Cir. 1984); *People v. Paulus* (Mich. 1982) 320 N.W. 2d 337; *Carmona v. Warden*, 549 F.Supp. 621 (S.D.N.Y. 1982); *United States v. Trammel*, 813 F.2d 946 (7th Cir. 1987); *Baxter v. U.S.*, 966 F.2d 387 (8th Cir. 1992); *State v. Torres*, 587 A.2d 582 (Md.App. 1991); *State v. Eesley*, 591 N.W.2d 846 (Wis. 1999); *State v. Williams*, 573 N.W.2d 106 (Neb. 1997).

<sup>84</sup> *Webb v. State*, 437 N.E.2d 1330 (Ind. 1982); *People v. Paulus*, 320 N.W.2d 337 (Mich. 1982). See also *United States v. Mauro*, 436 U.S. 340 (2nd Cir. 1978).

#### **4. Prisoner's Escape**

A prisoner's request for disposition of charges under Article III becomes void upon their escape from custody and they are no longer entitled to the protections of the IAD.<sup>85</sup> (Art. III, par. (f).) Any escape from the temporary custody of the receiving state "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." (Art. V, par. (g).)

#### **F. Tolling of Sentence**

The prisoner's sentence imposed by the sending state is *not* tolled during the period of their temporary custody in the receiving state. Rather, their term continues to run and they may earn good time credit according to the law of the sending state. (Art. V, par. (f).)

#### **G. Where IAD Should Not Be Used**

##### **1. Mentally Ill Prisoners**

The IAD cannot be used to transfer a prisoner who is adjudged to be mentally ill. (Art. VI, par. (b).)

##### **2. Death Penalty Cases**

Although its provisions would otherwise apply regardless of the charge pending in the receiving state, the IAD should *not* be used to obtain temporary custody of a prisoner where they are facing capital charges in the receiving state. The IAD requires that the prisoner be returned to the sending state at the "earliest practicable time consonant with the purposes of the agreement" following disposition of the receiving state's charges. (Art. V, par. (e).) Those purposes include eliminating the uncertainties, anxiety and apprehension caused by pending charges which obstruct programs of prison treatment and rehabilitation. Such programs have little application to a condemned prisoner so there is no purpose served in returning them to the sending state.

Therefore, in death penalty cases, the transfer of custody for trial should be accomplished through extradition with an executive agreement providing for return to the sending state only if the death penalty is not imposed.

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<sup>85</sup> *Birdwell v. Skeen*, 983 F.2d 1332 (5th Cir. 1992).



### **3. Early Parole Date**

Where the prisoner's parole date is imminent -- before trial in the receiving state could be completed or shortly thereafter -- it may not be desirable to return them to the sending state. In these cases the IAD should not be used; rather, the prisoner should be *extradited* when they parole. It is not necessary that they be transferred to local custody before being extradited - - the demanding state can take custody directly from the warden if the Governor's warrant was issued in time for arraignment and any habeas corpus proceedings to be completed before the parole date.

### **4. Other Non-IAD Cases**

Executive agreements may also be used to transfer custody of prisoners in other situations where the IAD does not apply. These would include the temporary transfer of local jail inmates, tried but unsentenced prisoners, and probation and parole violators.

**NOTE:** A useful reference, which cites numerous state and federal court decisions regarding the IAD, appears at 98 A.L.R.3d 160.

## **INTERSTATE AGREEMENT ON DETAINERS REFERENCE TABLE**

Alabama .....	Ala.Code 1975, § 15-9-81
Alaska .....	A.S. 33.35.010 to 33.35.040
Arizona.....	A.R.S. §§ 31-481, 31-482
Arkansas.....	A.C.A §§ 16-95-101 to 16-95-107
California .....	Cal. Pen. Code §1389 to 1389.8
Colorado.....	C.R.S.A. §§ 24-60-501 to 24-60-507
Connecticut .....	C.G.S.A. §§ 54-186 to 54-192
Delaware .....	11 Del.C. §§ 2540 to 2550
Dist. of Columbia.....	D.C. Official Code, 2001 Ed. §§ 24-801 to 24-805
Florida .....	F.S.A. §§ 941.45 to 941.50
Georgia.....	O.C.G.A., §§ 42-6-20 to 42-6-25
Hawaii .....	HRS §§ 834-1 to 834-6
Idaho .....	I.C. §§ 19-5001 to 19-5008
Illinois .....	S.H.A. 730 ILCS 5/3-8-9
Indiana.....	A.I.C. 35-33-10-4
Iowa.....	I.C.A. §§ 821.1 to 821.8
Kansas .....	K.S.A. §§ 22-4401 to 22-4408
Kentucky .....	KRS 440.450 to 440.510
Maine .....	34-A.M.R.S.A. §§9601 to 9609
Maryland .....	Code, Correctional Services, §§ 8-401 to 8-417
Massachusetts .....	M.G.L.A. c. 276 App., §§ 1-1 to 1-8
Michigan .....	M.C.L.A. §§ 780.601 to 780.608
Minnesota.....	M.S.A. § 629.294
Missouri .....	V.A.M.S. §§ 217.490 to 217.520
Montana .....	M.C.A. 46-31-101 to 46-31-204
Nebraska .....	R.R.S. 1943, §§ 29-759 to 29-765
*Nevada .....	N.R.S. 178.620 to 178.640
New Hampshire .....	RSA 606-A:1 to 606-A:6
New Jersey .....	N.J.S.A. 2A:159A-1 to 2A:159A-15
New Mexico.....	N.M.S.A. 1978, § 31-5-12 to § 31-5-16
New York.....	McKinney's CPL § 580.20
North Carolina .....	G.S. §§ 15A-761 to 15A-767
North Dakota.....	NDCC 29-34-01 to 29-34-08
Ohio.....	R.C. §§ 2963.30 to 2963.35
Oklahoma.....	22 Okl.St.Ann. §§ 1345 to 1349
Oregon.....	ORS 135.775 to 135.793
Pennsylvania .....	42 Pa.C.S.A. §§ 9101 to 9108
Rhode Island .....	Gen. Laws 1956, §§ 13-13-1 to 13-13-8
South Carolina .....	Code 1976, §§ 17-11-10 to 17-11-80
South Dakota.....	SDCL 23-24A-1 to 23-24A-34
Tennessee.....	T.C.A. §§ 40-31-101 to 40-31-108
Texas .....	Vernon's Ann. C.C.P. Art. 51.14
U.S. ....	18 U.S.C.A.App. 2
Utah.....	U.C.A. 1953, 77-29-5 to 77-29-11

Vermont .....	28 V.S.A. §§ 1501 to 1509, 1531 to 1537
Virginia .....	Code 1950, §§ 53.1-210 to 53.1-215
West Virginia .....	Code, 62-14-1 to 62-14-7
Wisconsin.....	W.S.A. 976.05, 976.06
Wyoming.....	Wyo.Stat.Ann. §§ 7-15-101 to 7-15-105

\*In addition to using a detainer request form, Nevada requires the Detainer Administrator of the requesting State to include an additional acknowledgement in Form V indicating the Governor participates in the request. Nevada requires this due to a Nevada Supreme Court ruling, State v. Blum, 98 Nev. 40, 639 P.2d 559 (1982). An explanation and sample of the Nevada requirement can be found in Appendix L-3.

## **APPENDICES**

## **TERMINOLOGY, DEFINITIONS & ACRONYMS**

### *Terms and Definitions*

**Anti-Shuttling** refers to 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.

**Application for Requisition** is the formal written request from the prosecutor to the governor of the demanding state for a requisition for a demand upon the governor of the asylum state for the return of a fugitive.

**Asylum State** is where the fugitive or defendant is found.

**Demanding State** is the state which seeks to extradite the fugitive.

**Detainer** is the request or notice filed by a criminal justice agency with the institution/warden or jailer where a prisoner is incarcerated, asking institution to hold the prisoner for prosecution for the agency or the requesting agency be notified when release of the prisoner is imminent.

**Executive Authority** means any person performing the functions of governor under state law.

**Extraditable Offense** refers to any criminal offense, felony or misdemeanor, in the demanding state regardless of whether the offense is a crime in the asylum state.

**Extradition** is the surrender, by one nation or state to another, of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which demands surrender.

**Fugitive or Fugitive from Justice** means one who is accused or convicted of a crime in one state and is later found in another state, regardless of the manner or reason for his/her departure from the charging state, except offenders transferred under the Interstate Compact for Adult Offender Supervision.

**Fugitive Affidavit** is the demanding state's prosecutor's verified application to his or her Governor requesting that Governor issue a requisition warrant for the return of a fugitive.

**Fugitive Complaint** is the document filed in the asylum state prior to receipt of the governor's warrant charging the person arrested with being a fugitive, or non-fugitive, from justice.

**Fugitive Warrant** is the arrest warrant issued by the local court in the asylum state prior to receipt of the governor's warrant authorizing the arrest and detention of the fugitive pending receipt of the governor's warrant.

**Governor's Warrant or Governor's Warrant of Rendition** is the warrant issued by the governor of the asylum state commanding that the fugitive be arrested and delivered to the designated agents of the demanding state.

**Interstate Extradition** is the right of one state to demand from the asylum state the surrender of a fugitive from justice from the demanding state when the fugitive is found in the asylum state.  
(United States Constitution, Art. IV, § 2, cl. 2; *Puerto Rico v. Branstad*, 483 U.S. 219, 227 (1987).)

**Magistrate** means any judicial officer as defined under applicable state statutes or any person certified to be a magistrate under the law of the demanding state.

**NCIC Message** is a teletype product from the National Crime Information Center (NCIC), a nationwide service available to all law enforcement agencies, conveying information relevant to alleged criminals and criminal offenses

**Non Fugitive** means a person who commits an act in one state that intentionally results in a crime in another state.

**Receiving State** is the state in which untried criminal charges are pending which receives temporary custody of a prisoner for purposes of trial.

**Rendition** refers to the return of a fugitive to the demanding state.

**Requisition** refers to the formal demand made by the governor of the demanding state upon the governor of the asylum state and upon which the governor's warrant is based.

**Requisition Warrant** is the request from one governor to another seeking extradition of an individual.

**Sending State** is the state in which the prisoner is incarcerated and which sends the prisoner to the state where charges are pending for the purposes of trial.

**Waiver of Extradition** means waiver by the accused of the issuance and service of a governor's rendition warrant, and consent to be transported to the demanding state.

#### *Acronyms*

**IAD** – Interstate Agreement on Detainers

**K.S.A.** – Kansas Statutes Annotated

**NCIC** – National Criminal Information Center

**ICAOS** – Interstate Compact for Adult Offender Supervision

**UCEA** – Uniform Criminal Extradition Act

**UIFSA** – Uniform Interstate Family Support Act

**UMDDA** – Uniform Mandatory Disposition of Detainers Act

**URES**A – Uniform Reciprocal Enforcement of Support Act

**U.S.C.** – United States Code

**U.S.C.A.** – United States Code Annotated

## AG-101

### APPLICATION FOR REQUISITION

(To be made in Triplicate)

#### TO THE GOVERNOR OF THE STATE OF KANSAS:

I respectfully request you issue a formal requisition demand of the Governor of the State of [ASYLUM STATE] for the apprehension and rendition of [full name of the Fugitive in CAPITAL LETTERS] who is charged in [KANSAS COURT NAME] Court, within and for the County of [KANSAS COUNTY], in this State, with the commission of the following criminal offense(s):

[List title of crime(s) and statute numbers in this section]:

That [full name of the Fugitive in CAPITAL LETTERS], while present in the State of [KANSAS COUNTY] committed certain acts which intentionally resulted in the commission of said crime in the State of Kansas, and is now, as your petitioner verily believes, in the County of [ASYLUM COUNTY], and State of [ASYLUM STATE], accused of a crime in Kansas, and the grounds for such belief are:

[Briefly set out information received such as correspondence, telegrams, etc., including the **DATE OF ARREST & DATE OF FIRST APPEARANCE** in the asylum state]

Your petitioner verily believes [Full name of the Fugitive in CAPITAL LETTERS] ☐ has ☐ has not been released on bond and is next set to appear in [NAME OF ASYLUM STATE COURT] on [DATE OF NEXT COURT APPEARANCE IN ASYLUM STATE].

The ends of justice, in my opinion, require the fugitive defendant be brought back to this State for trial at the public expense. In support of this application, I herewith present a duly certified copies of the ["COMPLAINT", "INFORMATION" OR "INDICTMENT" "JOURNAL ENTRY" "JUDGMENT" AS THE CASE MAY BE], supporting probable cause affidavit by law enforcement (*not required for indictments*), and arrest warrant now on file in the District Court of said County, which allege the facts required to be established, along with photographs and/or fingerprint cards, all of which are authentic and properly authenticated in accordance with the laws of this state; and that the copies of the papers submitted herewith have been compared with each other and are in all respects exact counterparts of this application and accompanying documents.

I nominate [COUNTY SHERIFF], or his/her designated officer or agent, of said County, as proper person to be appointed and commissioned by you as the agent of the State of Kansas to receive the said accused when apprehended, and bring him/her to this State and deliver him/her into the custody of the Sheriff of said County. I also certify that the above nominee has no private interest in the proposed arrest.

The facts constituting the offense are [BRIEFLY NARRATE THE UNDERLYING FACTS]:



# AFFIDAVIT OF APPLICANT

STATE OF KANSAS )  
 )  
 ) SS  
COUNTY OF \_\_\_\_\_)

I, [NAME OF PROSECUTING ATTORNEY], being first duly sworn upon oath, deposes  
and states:

1. I am a ☐ duly-elected District/County ☐ duly-appointed Deputy ☐ duly-appointed Assistant prosecuting attorney for [KANSAS COUNTY NAME], Kansas, which is part of the [NUMBER OF JUDICIAL DISTRICT] District of Kansas.
2. **I HEREBY CERTIFY** I have carefully examined the case, and verily believe that the facts stated in the accompanying proof are true and that the fugitive is the person accused of the crime charged; that the ends of public justice require that the fugitive be brought back to this State at public expense; that I believe that I have sufficient evidence to secure a conviction; that the charge was preferred and this application is made in good faith and not for the purpose of the collection of a debt or for any private purpose, and that if the fugitive is returned to this State the criminal proceedings will not be used for any of such purposes, but that it is my intention to diligently prosecute said fugitive for the crime charged.
3. I further state the Honorable [NAME OF JUDGE], District Court Judge of the [NUMBER OF JUDICIAL DISTRICT] of the State of Kansas issued a warrant for the arrest of [NAME OF FUGITIVE] upon charges for the following crimes:  
  
[NAME OF CHARGES, STATUTE NUMBER, AND SEVERITY LEVEL]
4. I further state the accused was ☐ present ☐ not present in [NAME OF COUNTY], Kansas at the time part of the alleged crime(s) was committed.

☐ District/County Attorney

☐ Deputy District/County Attorney

☐ Assistant District/County Attorney

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Judge of the District Court  
Judicial District

### **JUDICIAL FINDING OF PROBABLE CAUSE FOR EXTRADITION**

After review of the information contained in the Court's file, the application for requisition, and affidavit submitted by [NAME OF PROSECUTOR] in State of Kansas vs. \_\_\_\_\_, I find there is sufficient probable cause to request extradition of:

[NAME OF FUGITIVE]

Case Number [CASE NUMBER]

Date of Birth: [FUGITIVE'S DATE OF BIRTH]

- ☐ - Defendant is wanted on criminal charges he/she has not yet been advised on.
- ☐ - Defendant is wanted for Failure to Appear
- ☐ - Defendant is wanted for Failure to Comply with terms of Probation

\_\_\_\_\_  
Judge of the District Court

\_\_\_\_\_  
Judicial District

**NOTE:** The affidavit of probable cause must be sworn to before a JUDGE or MAGISTRATE.

**NOTE:** In order for an INFORMATION to constitute such an "affidavit made before a magistrate" as is required by 18 U.S.C.A. § 3182 it must be sworn to POSITIVELY BEFORE A MAGISTRATE, and not on "information and belief." A Clerk of a Court is not a MAGISTRATE—neither is a Notary Public.

STATE OF KANSAS )  
 )  
OFFICE OF THE ATTORNEY GENERAL )

Topeka, \_\_\_\_\_, 20\_\_\_\_

I have carefully examined the above and foregoing application for a requisition, and the accompanying papers thereto attached. It is my opinion, based upon such examination, that the application is in due for and complies with all the requirements of the law and the rules of interstate rendition of fugitives from justice, and that it would be proper for you as Governor to grant the application. I therefore approve the papers and advise for issuance of the requisition therein requested.

\_\_\_\_\_  
Attorney General

By \_\_\_\_\_  
Assistant Attorney General

**NOTE:** Hereafter attach to the application a court certified copies of the Complaint or Information sworn to before a MAGISTRATE, Probable Cause Affidavit, Arrest Warrant, and one informal copy of each statute violated.

## AG-102

### APPLICATION FOR REQUISITION

(To be made in Triplicate)

#### TO THE GOVERNOR OF THE STATE OF KANSAS:

I respectfully request you issue a formal requisition demand of the Governor of the State of [ASYLUM STATE] for the apprehension and rendition of [full name of the Fugitive in CAPITAL LETTERS] who is charged in [KANSAS COURT NAME] Court, within and for the County of [KANSAS COUNTY], in this State, with the commission of the following criminal offense(s):

[List title of crime(s) and statute numbers in this section]:

That [full name of the Fugitive in CAPITAL LETTERS], at the time of committing said crime, was personally present in said County and State, and is now, as your petitioner verily believes, in the County of [ASYLUM COUNTY], and State of [ASYLUM STATE], and has refused to waive extradition. The grounds for such belief are:

[Briefly set out information received such as correspondence, telegrams, etc., including the **DATE OF ARREST & DATE OF FIRST APPEARANCE** in the asylum state]

Your petitioner verily believes [Full name of the Fugitive in CAPITAL LETTERS] ☐ has ☐ has not been released on bond and is next set to appear in [NAME OF ASYLUM STATE COURT] on [DATE OF NEXT COURT APPEARANCE IN ASYLUM STATE].

The ends of justice, in my opinion, require the fugitive defendant be brought back to this State for trial at the public expense. In support of this application, I herewith present a duly certified copies of the ["COMPLAINT", "INFORMATION" OR "INDICTMENT" "JOURNAL ENTRY" "JUDGMENT" AS THE CASE MAY BE], supporting probable cause affidavit by law enforcement (*not required for indictments*), and arrest warrant now on file in the District Court of said County, which allege the facts required to be established, along with photographs and/or fingerprint cards, all of which are authentic and properly authenticated in accordance with the laws of this state; and that the copies of the papers submitted herewith have been compared with each other and are in all respects exact counterparts of this application and accompanying documents.

I nominate [COUNTY SHERIFF], or his/her designated officer or agent, of said County, as proper person to be appointed and commissioned by you as the agent of the State of Kansas to receive the said accused when apprehended, and bring him/her to this State and deliver him/her into the custody of the Sheriff of said County. I also certify that the above nominee has no private interest in the proposed arrest.

The facts constituting the offense are [BRIEFLY NARRATE THE UNDERLYING FACTS]:

## AFFIDAVIT OF APPLICANT

STATE OF KANSAS )  
 )  
 ) SS  
COUNTY OF \_\_\_\_\_)

I, [NAME OF PROSECUTING ATTORNEY], being first duly sworn upon oath, deposes  
and states:

1. I am a ☐ duly-elected District/County ☐ duly-appointed Deputy ☐ duly-appointed Assistant prosecuting attorney for [KANSAS COUNTY NAME], Kansas, which is part of the [NUMBER OF JUDICIAL DISTRICT] District of Kansas.
2. **I HEREBY CERTIFY** I have carefully examined the case, and verily believe that the facts stated in the accompanying proof are true and that the fugitive is the person accused of the crime charged; that the ends of public justice require that the fugitive be brought back to this State at public expense; that I believe that I have sufficient evidence to secure a conviction; that the charge was preferred and this application is made in good faith and not for the purpose of the collection of a debt or for any private purpose, and that if the fugitive is returned to this State the criminal proceedings will not be used for any of such purposes, but that it is my intention to diligently prosecute said fugitive for the crime charged.
3. I further state the Honorable [NAME OF JUDGE], District Court Judge of the [NUMBER OF JUDICIAL DISTRICT] of the State of Kansas issued a warrant for the arrest of [NAME OF FUGITIVE] upon charges for the following crimes:  
  
[NAME OF CHARGES, STATUTE NUMBER, AND SEVERITY LEVEL]
4. I further state the accused was ☐ present ☐ not present in [NAME OF COUNTY], Kansas at the time part of the alleged crime(s) was committed.

- ☐ District/County Attorney
- ☐ Deputy District/County Attorney
- ☐ Assistant District/County Attorney

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Judge of the District Court  
Judicial District

## **JUDICIAL FINDING OF PROBABLE CAUSE FOR EXTRADITION**

After review of the information contained in the Court's file, the application for requisition, and affidavit submitted by [NAME OF PROSECUTOR] in State of Kansas vs. \_\_\_\_\_, I find there is sufficient probable cause to request extradition of:

[NAME OF FUGITIVE]

Case Number [CASE NUMBER]

Date of Birth: [FUGITIVE'S DATE OF BIRTH]

- ☐ - Defendant is wanted on criminal charges he/she has not yet been advised on.
- ☐ - Defendant is wanted for Failure to Appear
- ☐ - Defendant is wanted for Failure to Comply with terms of Probation

\_\_\_\_\_  
Judge of the District Court  
\_\_\_\_\_ Judicial District

**NOTE:** The affidavit of probable cause must be sworn to before a JUDGE or MAGISTRATE.

**NOTE:** In order for an INFORMATION to constitute such an "affidavit made before a magistrate" as is required by 18 U.S.C.A. § 3182 it must be sworn to POSITIVELY BEFORE A MAGISTRATE, and not on "information and belief." A Clerk of a Court is not a MAGISTRATE—neither is a Notary Public.

STATE OF KANSAS )  
 )  
OFFICE OF THE ATTORNEY GENERAL )

Topeka, \_\_\_\_\_, 20\_\_\_\_

I have carefully examined the above and foregoing application for a requisition, and the accompanying papers thereto attached. It is my opinion, based upon such examination, that the application is in due form and complies with all the requirements of the law and the rules of interstate rendition of fugitives from justice, and that it would be proper for you as Governor to grant the application. I therefore approve the papers and advise for issuance of the requisition therein requested.

\_\_\_\_\_  
Attorney General

By \_\_\_\_\_  
Assistant Attorney General

**NOTE:** Hereafter, attach to the application court certified copies of Complaint or Information sworn to before a MAGISTRATE, the probable cause affidavit, the arrest warrant, and one informal copy of each statute violated.



## AG-103

### APPLICATION FOR REQUISITION

(To be made in triplicate)

**TO THE GOVERNOR OF THE STATE OF KANSAS:**

I respectfully request that you issue a formal requisition demand of the Governor of [ASYLUM STATE] for the apprehension and rendition of [full name of Fugitive in CAPITAL LETTERS] who, on [DATE OF CONVICTION], was convicted by virtue of the final judgment and sentence in this County and State of the commission of the crime(s) of [LIST OFFENSE(S) OF CONVICTION] and thereafter violated the terms and conditions of ☐ probation ☐ post-release supervision ☐ parole as appears from the accompanying proof, particularly the annexed Motion for Revocation and Affidavit of [NAME & TITLE OF AFFIANT] submitted herewith, and who, as appears from that document, is a fugitive from the justice of this State.

Your petitioner verily believes [full name of Fugitive in CAPITAL LETTERS] is now under arrest in the County of [ASYLYM COUNTY] in the State of [ASYLUM STATE], and has refused to waive extradition. The grounds for such belief are:

[Briefly set out information received such as correspondence, telegrams, etc., including the **DATE OF ARREST & DATE OF FIRST APPEARANCE** in the asylum state]

Your petitioner verily believes [Full name of the Fugitive in CAPITAL LETTERS] is next set to appear in [NAME OF ASYLUM STATE COURT] on [DATE OF NEXT COURT APPEARANCE].

The ends of justice, in my opinion, require the fugitive defendant be brought back to this State for trial at the public expense. In support of this application, I herewith present duly certified copies of the Kansas Sentencing Guidelines Journal Entry of Judgment, Orders of Probation, Motion for Probation Revocation and Affidavit of [NAME & TITLE OF AFFIANT] which allege the facts required to be established, along with photographs and/or fingerprint cards, all of which are authentic and properly authenticated in accordance with the laws of this state; and that the copies of the papers submitted herewith have been compared with each other and are in all respects exact counterparts of this application and accompanying documents.

I nominate [COUNTY SHERIFF], or his/her designated officer or agent, of said County, as proper person to be appointed and commissioned by you as the agent of the State of Kansas to receive the said accused when apprehended, and bring him/her to this State and deliver him/her into the custody of the Sheriff of said County. I also certify that the above nominee has no private interest in the proposed arrest.

## AFFIDAVIT OF APPLICANT

STATE OF KANSAS )  
 )  
COUNTY OF \_\_\_\_\_) SS

I, [NAME OF PROSECUTING ATTORNEY], being first duly sworn upon oath, deposes  
and states:

1. I am ☐ duly-elected District/County ☐ duly-appointed Deputy ☐ duly-appointed Assistant prosecuting attorney for [KANSAS COUNTY NAME], Kansas, which is part of the [NUMBER OF JUDICIAL DISTRICT] District of Kansas.
2. **I HEREBY CERTIFY** that I have carefully examined the case, and believe that the facts stated in the accompanying proof relating to the fugitive's conviction of the offenses, and the subsequent probation violation are true; that the ends of public justice require that the Fugitive be brought back to this state at public expense; and this application is made in good faith and not for the purpose of enforcing the collection of any debt or for any private purpose, and that if the fugitive is returned to this state the criminal proceedings will not be used for any of these purposes. I further certify that no other application has been made for a requisition for the fugitive growing out of the facts and circumstances upon which this application is made.
3. I further state that the Honorable [NAME OF JUDGE], District Court Judge of the [NUMBER OF JUDICIAL DISTRICT] of the State of Kansas issued a warrant for the arrest of [NAME OF FUGITIVE] upon allegations of violating conditions of ☐ probation ☐ post-release supervision ☐ parole

☐ District/County Attorney

☐ Deputy District/County Attorney

☐ Assistant District/County Attorney

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Judge of the District Court  
Judicial District

### **JUDICIAL FINDING OF PROBABLE CAUSE FOR EXTRADITION**

After review of the information contained in the Court's file, the application for requisition, and affidavit submitted by [NAME OF PROSECUTOR], I find there is sufficient probable cause to request extradition of:

[NAME OF FUGITIVE]

Case Number [CASE NUMBER]

Date of Birth: [FUGITIVE'S DATE OF BIRTH]

- ☐ - Defendant is wanted on criminal charges he/she has not yet been advised on.
- ☐ - Defendant is wanted for Failure to Appear
- ☐ - Defendant is wanted for Failure to Comply with terms of Probation

---

Judge of the District Court  
\_\_\_\_\_ Judicial District

**NOTE:** The affidavit of probable cause must be sworn to before a JUDGE or MAGISTRATE.

STATE OF KANSAS )  
 )  
OFFICE OF THE ATTORNEY GENERAL )

Topeka, \_\_\_\_\_, 20\_\_\_\_

I have carefully examined the above and foregoing application for a requisition, and the accompanying papers thereto attached. It is my opinion, based upon such examination, that the application is in due for and complies with all the requirements of the law and the rules of interstate rendition of fugitives from justice, and that it would be proper for you as Governor to grant the application. I therefore approve the papers and advise for issuance of the requisition therein requested.

\_\_\_\_\_  
Attorney General

By \_\_\_\_\_  
Assistant Attorney General

**NOTE:** Hereafter attach to the application court certified copies of the Kansas Sentencing Guidelines Journal Entry of Judgment, Orders of Probation with Conditions, Motion for Probation Revocation, Affidavit of the supervising officer, and Arrest Warrant.

## APPENDIX A

### WAIVER OF EXTRADITION

I, \_\_\_\_\_ alias \_\_\_\_\_, have this day appeared before the Honorable \_\_\_\_\_, Judge of the \_\_\_\_\_ Court, in \_\_\_\_\_, State of \_\_\_\_\_, a court record, and have been informed by the court that a demand is made for my surrender to the city of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, (demanding state), based upon criminal proceedings there (charging me with the commission of an offense) (alleging that I have escaped confinement) (alleging that I have broken the terms of bail, probation, or parole) (*strike inapplicable provisions*).

I have been informed by the court of my rights to counsel, to the issuance and service of a governor's extradition warrant, and to petition for a writ of habeas corpus as provided for in the Uniform Criminal Extradition Act, and I fully understand those rights.

I knowingly and voluntarily, and without promise of reward or leniency, state that I am the identical person sought by the demanding state, that I waive the issuance and service of the governor's extradition warrant and any other legal documents and procedures which otherwise would be required to secure my return to the demanding state, and that I knowingly and voluntarily consent to my return to that state.

I wholly exonerate and hold blameless in this matter the (Sheriff of \_\_\_\_\_ County) (Chief of Police of \_\_\_\_\_) (\_\_\_\_\_ Board of Pardons) or Department of Corrections) (*strike inapplicable provisions*) and all persons acting under the same, and agree to accompany to the demanding state any peace officer who may be sent to take me there, without requisition papers, warrant or rendition or other legal forms or processes having their object my return to that state. This agreement and waiver is made by me without reference to my guilt or innocence and shall not be considered in any manner as prejudicing my case and is not in any sense an admission of guilt.

Executed in quadruplicate before the above referenced court.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

I certify that I informed the above individual of the criminal proceedings pending against him/her and of the rights to procure legal counsel, to require the issuance and service of a governor's warrant of extradition, and to petition for a writ of habeas corpus as provided in the Uniform Criminal Extradition Act; and that the above individual knowingly and voluntarily, without promise, executed the foregoing waiver of extradition in my presence.

\_\_\_\_\_  
Judge

Seal

\_\_\_\_\_  
Court

(FORWARD ONE COPY TO THE GOVERNOR'S OFFICE, AND PROVIDE ONE COPY TO THE AGENT(S) OF THE DEMANDING STATE).

**APPENDIX B**

**PHOTO AFFIDAVIT**

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, of lawful age being first duly sworn, upon oath,  
depose and state:

1. I am a certified law enforcement officer of the \_\_\_\_\_  
(agency).
2. I am familiar with the subject of extradition, \_\_\_\_\_  
(subject's name), and hereby certify that the attached photograph is a true and correct photograph  
of said subject.

\_\_\_\_\_  
Print Name

Title/Rank

Agency

Subscribed and sworn to and before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Commission Number: \_\_\_\_\_



## **APPENDIX C**

### **EXPLANATION OF INMATE'S RIGHTS UNDER ARTICLE IV OF THE AGREEMENT ON DETAINERS**

1. You have the right to be taken before a court to be arraigned.
2. You have the right to the appointment of counsel by the court.
3. You have the right to file a petition for writ of habeas corpus in which you may allege:
  - a. That you are not the same person whose custody has been demanded by the prosecutor.
  - b. That there is no outstanding indictment, information, or complaint pending against you in the other state.
  - c. That the demand for your custody is not in proper form.

If you wish to waive these proceedings, you may do so at the time of your initial arraignment in court. A form will be provided to you for this purpose.

## APPENDIX L-1

### INTERSTATE AGREEMENT ON DETAINERS

#### **Procedure Used When Out-Of-State Inmate Initiates Request for Disposition of Charges Pending in Your State**

<u>Step</u>	<u>Action Initiated By</u>	<u>Action</u>	<u>Form Number</u>
1	RECEIVING STATE PROSECUTOR	Detainer lodged with warden	-
2	WARDEN	Notifies inmate of pending charges.	I
3	INMATE	Requests disposition of charges.	II
4	WARDEN	Certifies to inmate's status and offers temporary custody.  Attaches Forms III and IV to Form II and sends by registered or certified mail, return receipt requested, to prosecutor. The <b><u>180-day time limitation</u></b> starts the day the return receipt is signed.	III IV
5	RECEIVING STATE PROSECUTOR	Accepts offer of temporary custody from sending state.	VII
6	RECEIVING STATE PROSECUTOR	Requests agent's authority to act for receiving state.	VI
7	AGREEMENT ADMINISTRATOR	Authorizes agent to act for receiving state. Forwards copy to Warden, DOC accounting office, and returns 2 copies to prosecutor.	VI
8	PROSECUTOR	Following sentencing, notices detainer administrator of disposition of charges.	IX

## APPENDIX L-2

### INTERSTATE AGREEMENT ON DETAINERS

#### **Procedure Used When Receiving Prosecutor Initiates Process for Bringing Inmate to Trial in Your State**

	<u>Step</u>	<u>Action Initiated By</u>	<u>Action</u>	<u>Form Number</u>
1	RECEIVING STATE PROSECUTOR		Detainer lodged with warden.	-
2	WARDEN		Notifies inmate of pending charges.	I
3	RECEIVING STATE PROSECUTOR		Requests temporary custody for purpose of bringing inmate to trial.	V
4*	WARDEN		Offers inmate the opportunity to invoke right to speedy trial under Article III by signing Form II. If inmate does not sign Form II, contact local prosecutor to arrange court hearing.	
5	WARDEN BY WAY OF SENDING STATE PROSECUTOR		Takes inmate to court for “Cuyler Hearing”; furnishes court with copy from Form V and supporting documents (provided by correctional officials).	
6	COURT		Conducts arraignment (similar to extradition hearing). Advises inmate of right to counsel and habeas corpus. If habeas corpus denied (or not sought by inmate): court authorizes delivery of inmate to receiving state—OR—court stays delivery to allow for habeas corpus higher court.	
7	WARDEN		After court proceedings conclude, and 30 days have passed from the receipt of the prosecutor’s request for temporary custody, certifies inmate’s status and offers temporary custody.	III VI VIII
8	RECEIVING STATE PROSECUTOR		Requests agent’s authority to act for receiving state.	VI

9	AGREEMENT ADMINISTRATOR	Authorizes agent to act for receiving state. Forwards copy to warden in sending state, copy to DOC accounting office, two copies to receiving state prosecutor.	VI
10	AGENT	With proper authority and credentials, received custody of inmate; returns to receiving state. <u>Inmate must be brought to trial within 120 days of arrival</u> in the receiving state.	
11	RECEIVING STATE PROSECUTOR	Following sentencing, notifies Agreement Administrator of disposition of charges.	IX

**\* This is an optional step; it may benefit correctional personnel and the prosecutor if the inmate signs a Form II.**

### APPENDIX L-3

#### INTERSTATE AGREEMENT ON DETAINERS

**Explanation from Nevada and Additional Language Required by Nevada  
when a Prosecutor is Requesting Temporary Custody of a Prisoner under the IAD**

The following explanation was provided by the State of Nevada requiring their special requirements for IAD:

Please be advised that all Article IV requests under the IAD, as in the instant case, must include a showing that either the Governor of the requesting state, or the Agreement Administrator acting on behalf of the Governor, participates in the request. This is necessary because of a Nevada Supreme Court decision. The case we refer to is Director v. Blum, 98 Nev. 40, 639 P. 2d 559 (1982). A copy of the decision is attached for your information.

*Authorization and approval of this request for temporary custody is given  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.*

GOVERNOR (name)  
STATE OF (name)

By: \_\_\_\_\_  
*Agreement Administrator  
Acting for the Governor"*

If you are requesting custody of an inmate for a disposition of detainer from Nevada, the italicized language above must be added to Form V. This language will be completed by the Kansas Governor's Office.

## FORM I

### INTERSTATE AGREEMENT ON DETAINERS

One copy of this form, signed by the inmate and the warden, should be retained by the warden. One copy, signed by the warden should be retained by the inmate.

#### NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT AND OF RIGHT TO REQUEST DISPOSITION

Inmate \_\_\_\_\_ No. \_\_\_\_\_ Inst. \_\_\_\_\_

#### NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT

Pursuant to the Interstate Agreement on Detainers (IAD), you are hereby informed that a detainer has been lodged for the following untried indictments, informations, or complaints against you concerning which the undersigned has knowledge, and the source and contents of each:

- (1) Jurisdiction/Agency \_\_\_\_\_  
Crime(s) charged: \_\_\_\_\_
- (2) Jurisdiction/Agency: \_\_\_\_\_  
Crime(s) charged: \_\_\_\_\_
- (3) Jurisdiction/Agency: \_\_\_\_\_  
Crime(s) charged: \_\_\_\_\_

#### RIGHT TO REQUEST DISPOSITION OF CHARGES AND TO SPEEDY TRIAL

You are hereby further advised that under the IAD you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending, and the appropriate court, that a final disposition be made thereof. You shall then be brought to trial within 180 days, unless extended pursuant to provisions of the IAD, after said prosecuting officer and said court have received written notice of the place of your imprisonment and your request, together with a certificate of the custodial authority as more fully set forth in the IAD. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

## WAIVER AND CONSENT

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of trial to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the IAD and a further consent to be voluntarily returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify \_\_\_\_\_ of the institution in which you are confined.

## RIGHT TO OPPOSE REQUEST FOR TEMPORARY CUSTODY

You are also advised that under provisions of the IAD the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may request your temporary custody to obtain a final disposition thereof. In that event, you may oppose such request. You may request the Governor of this state to disapprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Governor has not affirmatively consented to or ordered such delivery. You are also entitled to the procedural protections provided in state extradition laws.

\_\_\_\_\_ Dated: \_\_\_\_\_  
Warden

## CUSTODIAL AUTHORITY

Name: \_\_\_\_\_  
Institution: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State: \_\_\_\_\_  
Telephone: \_\_\_\_\_

## RECEIVED

INMATE: \_\_\_\_\_ NO. \_\_\_\_\_ DATE: \_\_\_\_\_  
(Signature)  
WITNESS: \_\_\_\_\_ DATE: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Printed Name & Title)

## FORM II

### INTERSTATE AGREEMENT ON DETAINERS

Six copies, if only one jurisdiction within the state involved has an indictment, information or complaint pending. Additional copies will be necessary for prosecuting officials and clerks of court if detainers have been lodged by other jurisdictions within the state involved. One copy should be retained by the inmate. One signed copy should be retained by the institution. Signed copies must be sent to the Agreement Administrators of the sending and receiving states, the prosecuting official of the jurisdiction which placed the detainer, and the clerk of the court which has jurisdiction over the matter. The copies for the prosecuting official and the court must be transmitted by certified or registered mail, return receipt requested.

#### INMATE'S NOTICE OF PLACE OF IMPRISONMENT AND REQUEST FOR DISPOSITION OF INDICTMENTS, INFORMATIONS OR COMPLAINTS

TO: (1) \_\_\_\_\_ Prosecuting Officer \_\_\_\_\_  
(Jurisdiction)

(2) \_\_\_\_\_ Court \_\_\_\_\_  
(Jurisdiction)

And to all other prosecuting officers and courts of jurisdictions listed below in which indictments, informations or complaints are pending.

You are hereby notified that the undersigned, \_\_\_\_\_, is now  
(Inmate's Name & Number)

imprisoned in \_\_\_\_\_ at \_\_\_\_\_.  
(Institution) (City and State)

I hereby request that final disposition be made of the following indictments, informations or complaints now pending against me: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Failure to take action in accordance with the Interstate Agreement on Detainers (IAD), to which your state is committed by law, will result in the dismissal of the indictments, information or complaints.

I hereby agree that this request will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against me from your state. I also agree that this request shall be deemed to be my waiver of extradition to your state for any proceeding contemplated hereby, and a waiver of extradition to your state to serve any sentence there imposed upon me, after completion of my term of imprisonment in this state. I also agree that this request shall constitute a consent by me to the production of my body in any court where my presence may be required in order to effectuate the purposes of the IAD and a further consent to be returned to the institution in which I now am confined.



If jurisdiction over this matter is properly in another agency, court, or officer, please designate below the proper agency, court, or officer and return this form to sender.

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The required Certificate of Inmate Status (Form III) and Offer of Temporary Custody (Form IV) are attached.

---

Inmate's Printed Name & Number

---

Inmate's Signature

---

Date

---

Witness's Printed Name & Title

---

Witness's Signature

---

Date

## FORM III

### INTERSTATE AGREEMENT ON DETAINERS

In the case of an inmate's request for disposition under Article III, copies of this Form should be attached to all copies of Form II. In the case of a request initiated by a prosecutor under Article IV, a copy of this Form should be sent to the prosecutor upon receipt by the warden of Form V. Copies of this Form should be sent to all other prosecutors in the same state who have lodged detainers against the inmate. A copy may be give to the inmate.

### CERTIFICATE OF INMATE STATUS

\_\_\_\_\_  
(Inmate)

\_\_\_\_\_  
(Number)

\_\_\_\_\_  
(Institution)

\_\_\_\_\_  
(Location)

\_\_\_\_\_ hereby certifies:

\_\_\_\_\_  
(Custodial authority)

1. The inmate's commitment offense(s): \_\_\_\_\_
2. The term of commitment under which the inmate is being held: \_\_\_\_\_
3. The time already served: \_\_\_\_\_
4. Time remaining to be served on the sentence: \_\_\_\_\_
5. Good time earned/Good time release date: \_\_\_\_\_
6. The date of parole eligibility of the inmate: \_\_\_\_\_
7. The decisions of the state parole agency relating to the inmate: (If additional space is needed, use reverse side.) \_\_\_\_\_  
\_\_\_\_\_
8. Maximum expiration date under present sentence: \_\_\_\_\_
9. Security level/special security requirements: \_\_\_\_\_
10. Detainers currently on file against this inmate from your state: \_\_\_\_\_  
\_\_\_\_\_

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\_\_\_\_\_ Dated: \_\_\_\_\_  
Warden

**CUSTODIAL AUTHORITY**

Name/Title: \_\_\_\_\_

Institution: \_\_\_\_\_

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

Telephone: \_\_\_\_\_

## FORM IV

### INTERSTATE AGREEMENT ON DETAINERS

Inmate's request: Copies of this Form should be attached to all copies of Form II. Prosecutor's request: This Form should be completed after the warden has approved the request for temporary custody, expiration of the 30 day period, and successful completion of a pretransfer hearing. Copies of this Form should then be sent to all officials who receive(d) copies of Form III. One copy also should be given to the inmate and one copy should be retained by the institution. Copies mailed to the prosecutor should be sent certified or registered mail, return receipt requested.

### OFFER TO DELIVER TEMPORARY CUSTODY

TO: \_\_\_\_\_ Prosecuting Officer

\_\_\_\_\_

And to all other prosecuting officers and courts of jurisdictions listed below from which indictments, informations or complaints are pending.

RE: \_\_\_\_\_ No. \_\_\_\_\_  
(Inmate)

Pursuant to Article V of the Interstate Agreement on Detainers (IAD), the undersigned hereby offers to deliver temporary custody of the above-named inmate to the appropriate authority in your state in order that speedy and efficient prosecution may be had of the indictment, information or complaint which is

☐ described in the attached inmate's request (Form II)

☐ described in your request for custody (Form V) of \_\_\_\_\_  
(Date)

#### The required Certificate of Inmate Status (Form III)

☐ is enclosed

☐ was sent to you with our letter of \_\_\_\_\_  
(Date)

Indictments, informations or complaints charging the following offenses are also pending against the inmate in your state and you are hereby authorized to transfer the inmate to the custody of appropriate authorities in these jurisdictions for purposes of disposing of these indictments, informations or complaints.

**Offense:**

**County or Other Jurisdiction:**

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**If you do not intend to bring the inmate to trial, please inform us as soon as possible.**

\_\_\_\_\_  
Warden

Date: \_\_\_\_\_

**CUSTODIAL AUTHORITY**

Name/Title: \_\_\_\_\_

Institution: \_\_\_\_\_

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

Telephone: \_\_\_\_\_

# INTERSTATE AGREEMENT ON DETAINERS

# REQUEST FOR TEMPORARY CUSTODY

City/State: \_\_\_\_\_ Telephone: \_\_\_\_\_  
\_\_\_\_\_

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action in accordance with its terms and the provisions of the IAD.

Signature: \_\_\_\_\_ Dated: \_\_\_\_\_  
\_\_\_\_\_  
Judge

\_\_\_\_\_, Judge  
(Printed name)

Court/Judicial District: \_\_\_\_\_

City/State: \_\_\_\_\_

Telephone: \_\_\_\_\_

## FORM VI

### INTERSTATE AGREEMENT ON DETAINERS

Five copies. All copies, with original signatures by the prosecutor and the agent, should be sent to the Agreement Administrator of their own state. After signing all copies, the Administrator should retain one for his/her files, send one to the warden/superintendent of the institution in which the inmate is located and return two copies to the prosecutor, who will give one to the agent for use in establishing his/her authority and place one in his/her files. One copy should also be forwarded to the Agreement Administrator in the sending state.

### EVIDENCE OF AGENT'S AUTHORITY TO ACT FOR RECEIVING STATE

TO: \_\_\_\_\_

Administrator of the Agreement on Detainers

\_\_\_\_\_  
(Address)

\_\_\_\_\_ is confined in \_\_\_\_\_  
(Inmate's name and number) (Institution)

\_\_\_\_\_ and, pursuant to the Interstate Agreement on Detainers  
(Address)

(IAD), will be taken into custody at the institution on or about \_\_\_\_\_  
for delivery to the County of \_\_\_\_\_, State of \_\_\_\_\_ for trial.

After the completion of the trial, the inmate shall be returned to the sending state.

In accordance with Article V(b), I have designated the agent(s) named below to return the prisoner.

\_\_\_\_\_  
(Prosecutor's Signature) Dated: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

County: \_\_\_\_\_

Address: \_\_\_\_\_

City/State: \_\_\_\_\_ Telephone: \_\_\_\_\_

Agent(s) printed name(s) and signature(s):

\_\_\_\_\_ and/or  
\_\_\_\_\_ and/or  
\_\_\_\_\_

TO: Warden/Superintendent



In accordance with the above representation and the provisions of the IAD, the persons listed above are hereby designated as Agents for the State of \_\_\_\_\_ to deliver \_\_\_\_\_

(Inmate Name & Number)  
To \_\_\_\_\_, State of \_\_\_\_\_ for trial. At completion of the trial the  
(Jurisdiction)

above inmate shall be returned to \_\_\_\_\_  
(Institution & Address)

Signature: \_\_\_\_\_ Dated: \_\_\_\_\_  
Agreement Administrator

Agreement Administrator: \_\_\_\_\_

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

Telephone: \_\_\_\_\_

## FORM VII

### INTERSTATE AGREEMENT ON DETAINERS

Six copies. **IMPORTANT: This form should only be used when an offer of temporary custody has been received as the result of an inmate's request for disposition of a detainer.** [If the offer has been received because another prosecutor in your state has initiated the request, use Form VIII.] Copies of Form VII should be sent to the warden, the inmate, the other jurisdictions in your state listed in the offer of temporary custody, and the Agreement Administrators of the sending and receiving states. Copies should be retained by the person filing the acceptance and the judge who signs it. If the offer of custody is being made to more than one jurisdiction in your state, the prosecutor from each jurisdiction should submit a Form VII.

#### PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY OFFERED WITH AN INMATE'S REQUEST FOR DISPOSITION OF A DETAINER

TO: \_\_\_\_\_  
Warden  
\_\_\_\_\_  
(Institution)  
\_\_\_\_\_  
(Address) (City/State)  
In response to your letter of \_\_\_\_\_ and offer of temporary custody regarding  
(Date)  
\_\_\_\_\_, who is presently under indictment, information,  
(Inmate's Name & Number)  
or complaint in \_\_\_\_\_ of which I am the \_\_\_\_\_,  
(Jurisdiction) (Title of Prosecuting Officer)

please be advised that I accept temporary custody and that I propose to bring this person to trial on the indictment, information, or complaint named in the offer within the time specified in Article III(a) of the Interstate Agreement on Detainers (IAD).

I hereby agree that immediately after the trial is completed in this jurisdiction, I will return the inmate directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, Prosecutor's Report of Disposition of Charges, immediately after trial, and return it to your state with the inmate.

(If your jurisdiction is the only one named in the offer of temporary custody, use the space below to indicate when you would like to send your agents to bring the inmate to your jurisdiction. If the offer of temporary custody has been sent to other jurisdictions in your state, use the following space to make inquiry as to the order in which you will receive custody, or to indicate any arrangements you have already made with other jurisdictions in your state in this regard. Each prosecutor in a receiving state jurisdiction should submit a Form VII in accordance with the instructions above.)

**ARRANGEMENTS / INQUIRY:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Prosecutor's Signature: \_\_\_\_\_ Dated: \_\_\_\_\_  
Printed Name/Title: \_\_\_\_\_  
County/Jurisdiction: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State: \_\_\_\_\_  
Telephone: \_\_\_\_\_

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited herein are correct and that having duly recorded this acceptance, I hereby transmit it for action in accordance with its terms and the provisions of the IAD.

Judge's Signature: \_\_\_\_\_ Dated: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Court/Judicial District: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State: \_\_\_\_\_  
Telephone: \_\_\_\_\_

## FORM VIII

### INTERSTATE AGREEMENT ON DETAINERS

Six copies. **IMPORTANT:** This form should only be used when an offer of temporary custody has been received as the result of a prosecutor's request for disposition of a detainer. [If the offer has been received because an inmate has initiated the request, use Form VII to accept such an offer.] Include the bracketed sentence in the first paragraph if you have been offered custody as a result of another prosecutor's request for disposition. Copies of Form VIII should be sent to the warden, the inmate, the other jurisdictions in your state listed in the offer of temporary custody, and the Agreement Administrators of the sending and receiving states. Each prosecutor in a receiving state jurisdiction should submit a Form VIII in accordance with these instructions. Copies should be retained by the person filing the acceptance and the judge who signs it.

#### PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY OFFERED IN CONNECTION WITH A PROSECUTOR'S REQUEST FOR DISPOSITION OF A DETAINER

TO: \_\_\_\_\_  
Warden  
\_\_\_\_\_  
(Institution)  
\_\_\_\_\_  
(Address) (City/State)

According to your letter of \_\_\_\_\_, \_\_\_\_\_  
(Date) (Inmate's Name & Number)

is being returned to this state at the request of \_\_\_\_\_,  
(Name & Title of Prosecuting Officer)

of \_\_\_\_\_. [I hereby accept your offer of temporary custody of the above inmate,  
(Jurisdiction)]

who is also under indictment, information, or complaint in \_\_\_\_\_.]  
(Jurisdiction)

of which I am the \_\_\_\_\_.  
(Title of Prosecuting Officer)

I plan to bring this person to trial on said indictment, information, or complaint within the time specified in Article IV(c) of the Interstate Agreement on Detainers (IAD).

I hereby agree that immediately after the trial is completed in this jurisdiction, I will return the inmate directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, Prosecutor's Report of Disposition of Charges, immediately after trial, and return it to your state with the inmate.

(Use the following space to make inquiry as to the order in which your jurisdiction will receive custody or to inform the warden of arrangements you have already made with the other jurisdictions in your state in this regard.)

**ARRANGEMENTS / INQUIRY:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Prosecutor's Signature: \_\_\_\_\_ Dated: \_\_\_\_\_  
Printed Name/Title: \_\_\_\_\_  
County/Jurisdiction: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State: \_\_\_\_\_  
Telephone: \_\_\_\_\_

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited herein are correct and that having duly recorded this acceptance, I hereby transmit it for action in accordance with its terms and the provisions of the IAD.

Judge's Signature: \_\_\_\_\_ Dated: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Court/Judicial District: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State: \_\_\_\_\_  
Telephone: \_\_\_\_\_

## FORM IX

### INTERSTATE AGREEMENT ON DETAINERS

Four copies. One copy to be retained by the prosecutor; one copy to be sent to the warden, superintendent, or director of the state of original imprisonment; one copy to be sent to the Agreement Administrator of each state.

#### PROSECUTOR'S REPORT OF DISPOSITION OF CHARGES

TO: \_\_\_\_\_  
Warden

\_\_\_\_\_  
(Institution in which the Inmate was originally incarcerated)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City/State)

\_\_\_\_\_, was transferred to the State of  
(Inmate's Name & Number)

\_\_\_\_\_ pursuant to the Interstate Agreement on Detainers  
(IAD) for trial based on the charge or charges contained in the

☐ IAD Form II (Inmate's Request)

☐ IAD Form V (Prosecutor's Request)

The disposition of the charge(s), including any sentence imposed, in this jurisdiction was as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ Please withdraw detainer

☐ Please lodge attached judgment/commitment as a detainer

Contact the following **30 to 60 days prior to release** to make arrangements to return the inmate:

Name/Title: \_\_\_\_\_

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

Telephone: \_\_\_\_\_

Prosecutor's Signature: \_\_\_\_\_ Dated: \_\_\_\_\_

Printed Name/Title: \_\_\_\_\_

County/Jurisdiction: \_\_\_\_\_

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

Telephone: \_\_\_\_\_

## **DIRECTORY OF KANSAS EXTRADITION & DETAINER OFFICIALS**

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