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DISPOSITION OF PENDING CHARGES

THE OHIO "FAST AND SPEEDY TRIAL ACT" AND THE INTERSTATE AGREEMENT ON DETAINERS

Ohio law allows a person who is incarcerated in an Ohio correctional institution to request the speedy disposition of any untried indictment, complaint, or information that is pending against the prisoner. If the request for disposition is properly made and served on the required individuals, the charge can be dismissed if it is not disposed of within the required time period.

Which law can I use to request the State to dispose of my untried charge?

Two laws allow a person who is incarcerated in an Ohio correctional institution to request a speedy disposition of a pending, untried charge. If the charge is pending in an Ohio court, the Fast and Speedy Trial Act, R.C. 2941.401, controls the process for requesting disposition of the charge. If the charge is pending in another State or in a Federal court, the Interstate Agreement on Detainers, R.C. 2963.30, controls the process for requesting disposition of the charge. The Interstate Agreement on Detainers is often referred to as the "IAD."

The Fast & Speedy Trial Act does not apply to you if you are not in an Ohio correctional institution. So you cannot use that statute if you are incarcerated in a county jail or a similar lock-up. That restriction does not apply to the IAD; jail inmates **can** seek relief under the IAD.

Do these laws apply to the "charge" or detainer in my case?

Many detainers cannot be removed through the Fast & Speedy Trial Act or the IAD. These statutes apply only to **untried criminal charges** brought against you by an indictment, a bill of information, or a criminal complaint. So they **do not apply** to: community-control, probation, parole, or postrelease control revocation proceedings; to bench warrants (for example, for failure to appear or for contempt of court) (a bench warrant is often referred to as a "capias"); or to arrest warrants arising from an investigation that has not yet resulted in a criminal charge.

[If the pending, untried charge relates to a misdemeanor complaint, and DRC tells you that R.C. 2941.401 does not apply to you, please write to this office at the address listed on page 3 of this packet.]

How do I request a speedy disposition?

Generally speaking, you request a speedy disposition by kiting information about the pending case to the Central Record Office – Detainer Section and asking for a speedy disposition of that case. The Central Record Office will prepare the required paperwork, including the Warden’s signed certificate, and send it to the judge and prosecutor as required by law. A more detailed explanation about the process follows.

When a person is transferred to DRC custody, the Bureau of Records Management (BORM) completes a record check and notifies any jurisdiction for which you have a warrant that you are incarcerated. When such a jurisdiction requests a detainer, BORM will ensure that the inmate is notified about the detainer and provided an opportunity to request a speedy trial.

To request a speedy disposition of a pending charge, you should complete the form included in this packet entitled “**Request for Disposition of Charges (R.C. 2941.401)**” if the charge is pending in an Ohio court, or the form entitled “**Request for Disposition of Charges Pending in Another State or in a Federal Court - Interstate Agreement on Detainers (IAD)**,” if the charge is pending in another State or in a Federal court. You should kite the request form to the Central Record Office—Detainer Section. That office will prepare the speedy-trial request, place the warden’s signature on it, and return it to BORM. That office will send the request to the court and prosecutor by certified mail. *You should keep a copy of any receipt that you receive regarding the mailing of your speedy-trial request.*

IAD requests are processed a little differently than in-State requests. One requirement of the IAD is that **a detainer must be lodged against the inmate when he or she makes the request**. So the Detainer Section will **not** process a request for disposition unless the other State has sent the Detainer Section a copy of the warrant and a request to lodge a detainer. When a prisoner submits a request for disposition under the IAD, the Detainer Section will contact the other State and ask for a copy of the warrant and a request to lodge a detainer. But the Detainer Section cannot force the other State to send Ohio a warrant and detainer request. If that occurs, the Detainer Section does not process the IAD request any further.

The process for IAD requests involving charges pending in a Federal court is a little different from that involving out-of-State charges. If the Detainer Section receives an IAD request from an inmate that involves a Federal case, and if no Federal detainer is pending against the inmate at that time, the Detainer Section does **not** send Federal officials a request for a warrant and request to place a detainer. The inmate must contact the Federal agency and ask those officials to send the Detainer Section a copy of the warrant and a detainer request so that you can effect your rights under the IAD.

Subject to the requirements of R.C. 2941.401 or the IAD, from the time the court and prosecutor receive your request and the warden’s certificate, the State has 180 days in which to bring you back to court to dispose of that charge. If you have not been brought back to court within 180 days, the charge must be dismissed.

How do I request a speedy disposition if the prosecuting agency has not filed a detainer against me?

For cases that you believe are pending, but for which no detainer has been lodged, you must first obtain the case number for the pending case. If you do not know the case number for your case, you can complete the form included in this packet entitled “**Request for Case Information – Clerk of Court**” and send it to the Clerk of Court in the jurisdiction in which you believe your case is pending. The law library has a set of legal directories which contain the addresses for all of the clerks of court in Ohio. You should include a self-addressed, postage-paid envelope with each request you make to each Clerk of Court. If you do not give the clerk a return envelope, there is a good chance that the Clerk’s office will **not** send you the information you requested.

Once the clerk of court has given you the case number, you should complete the form included in this packet entitled “**Request for Disposition of Charges (R.C. 2941.401)**” if the charge is pending in an Ohio court, or the form entitled “**Request for Disposition of Charges Pending in Another State or in a Federal Court - Interstate Agreement on Detainers (IAD)**,” if the charge is pending in another State or in a Federal court. Then, kite the form to the Central Record Office—Detainer Section. That office will prepare the speedy-trial request and place the warden’s signature on it. It will then be returned to BORM, which will send the request to the court and prosecutor by certified mail. *You should keep a copy of any receipt that you receive regarding the mailing of your speedy-trial request.*

Subject to the requirements of R.C. 2941.401 or the IAD, from the time the court and prosecutor receive your request, the State has 180 days in which to bring you back to court to dispose of that charge. If you have not been brought back to court within 180 days, the charge must be dismissed.

Filing a request for disposition constitutes a waiver of the right to an extradition

IF YOU HAVE FURTHER QUESTIONS, CONTACT THE PUBLIC DEFENDER AT YOUR RECEPTION CENTER. IF YOU ARE NO LONGER AT THE RECEPTION CENTER, CONTACT THE INTAKE SECTION AT THE OHIO PUBLIC DEFENDER’S OFFICE IN COLUMBUS, AT THE FOLLOWING ADDRESS:

**OHIO PUBLIC DEFENDER
INTAKE SECTION
250 E. BROAD STREET
SUITE 1400
COLUMBUS, OHIO 43215**

-End-
(Rev: 2/3/17)
#474242

Request for Case Information – Clerk of Court

Clerk of Court

Date: _____

NAME OF COURT

STREET ADDRESS

CITY, STATE, AND ZIP CODE

Dear Clerk:

I, _____, am currently incarcerated at
NAME AND INSTITUTIONAL NUMBER

_____. I believe that I have one or more
NAME OF INSTITUTION

pending criminal cases in your jurisdiction, in which I would like to request a final disposition in accordance with R.C. 2941.401. I am therefore requesting that you provide me with the case number for any pending case(s) that I may have in your county.

My date of birth is: _____.

My Social Security Number is: _____.

My approximate date of arrest in your jurisdiction was: _____.

On the following page, please list the information requested above, as well as any other information or developments relative to my outstanding case(s). I have enclosed a self-addressed, postage-prepaid envelope for your convenience. Thank you for your cooperation in this matter.

Respectfully submitted,

SIGNATURE

NAME AND INSTITUTIONAL NUMBER

INSTITUTION

ADDRESS

CITY, STATE & ZIP

Request for Disposition of Charges (R.C. 2941.401)

If you have outstanding charges that you wish to dispose of while you are incarcerated, please complete this form and send it to the Central Record Office—Detainer Section, via kite.

County, City, and State of offense(s):

Case Numbers: *(If you know your case number, include it below. If you do not know your case number, but you can obtain it by talking to a friend or family member on the outside, it is a good idea to obtain the case number before sending this form to the Central Records.)*

Felony _____ **or Misdemeanor** _____ *(check which apply)*

Offense(s) _____

Date warrant issued, or date of offense:

Once this form is filled out, send it to the Central Record Office—Detainer Section, via kite. The Central Record Office will contact the appropriate authorities. You will be notified and offered a fast and speedy trial under R.C. 2941.401, **if it is an untried indictment or complaint.**

Your name: _____

Your inmate number: _____

Today's date: _____

**Request for Disposition of Charges
Pending in Another State
or in a Federal Court
Interstate Agreement on Detainers (IAD)**

If you have outstanding charges in another State or in a Federal court that you want to dispose of while you are incarcerated, complete this form and kite it to the **Central Records Office – Detainer Section.**

City, County, and State of offense(s):

Case Numbers: *(If you know your case number, include it below. If you do not know your case number, but can get it through a friend or family member, it is a good idea to get the case number and put it on this form, below.)*

Felony_____ **or Misdemeanor**_____ *(check which apply)*

Offense(s)_____

Date warrant issued or date of offense:

Name and Address of Prosecutor:

After filling out this form, kite it to the Central Records Office – Detainer Section. (Keep a copy for yourself.) That office will contact the proper authorities. You should be notified and offered a trial under the Interstate Agreement on Detainers, **if it is an untried indictment or complaint.**

Your name:_____

Your inmate number:_____

Today's date:_____

R.C. 2941.401 - Fast & Speedy Trial

When a person has entered upon a term of imprisonment in a correctional institution of this state, and when during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, he shall be brought to trial within one hundred eighty days after he causes to be delivered to the prosecuting attorney and the appropriate court in which the matter is pending, written notice of the place of his imprisonment and a request for a final disposition to be made of the matter, except that for good cause shown in open court, with the prisoner or his counsel present, the court may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the warden or superintendent having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time served and remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the adult parole authority relating to the prisoner.

The written notice and request for final disposition shall be given or sent by the prisoner to the warden or superintendent having custody of him, who shall promptly forward it with the certificate to the appropriate prosecuting attorney and court by registered or certified mail, return receipt requested.

The warden or superintendent having custody of the prisoner shall promptly inform him in writing of the source and contents of any untried indictment, information, or complaint against him, concerning which the warden or superintendent has knowledge, and of his right to make a request for final disposition thereof.

Escape from custody by the prisoner, subsequent to his execution of the request for final disposition, voids the request.

If the action is not brought to trial within the time provided, subject to continuance allowed pursuant to this section, no court any longer has jurisdiction thereof, the indictment, information, or complaint is void, and the court shall enter an order dismissing the action with prejudice.

This section does not apply to any person adjudged to be mentally ill or who is under sentence of life imprisonment or death, or to any prisoner under sentence of death.

R.C. § 2963.30. Interstate agreement on detainers

The Interstate Agreement on Detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein, in the form substantially as follows:

THE INTERSTATE AGREEMENT ON DETAINERS

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trials of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(a) State shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

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

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

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for good cause shown in open court, the prisoner or his counsel being

present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

- (b)** The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.
- (c)** The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his rights to make a request for final disposition of the indictment, information or complaint on which the detainer is based.
- (d)** Any request or [for] final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other officials having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.
- (e)** Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.
- (f)** Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV

- (a)** The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.
- (b)** Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.
- (c)** In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.
- (d)** Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.
- (e)** If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V

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

entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place of trial, whichever custodian arrangement may be approved by the custodian.

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

 - (1)** Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.
 - (2)** A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.
- (c)** If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.
- (d)** The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction,[,] except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.
- (e)** At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.
- (f)** During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.
- (g)** For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.
- (h)** From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner,[,] the provisions of this paragraph shall govern unless the states concerned

shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI

- (a)** In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.
- (b)** No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill, or who is under sentence of death.

Article VII

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

Article VIII

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

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any agreement, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.