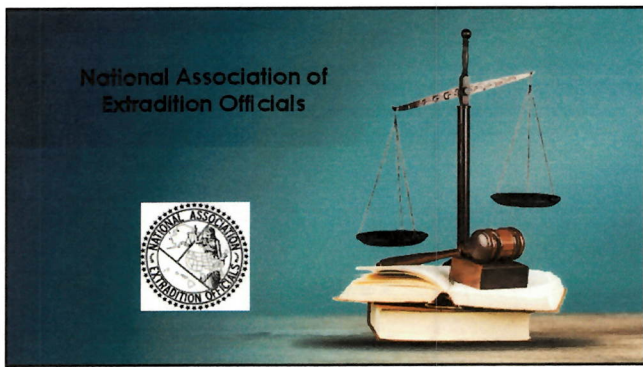


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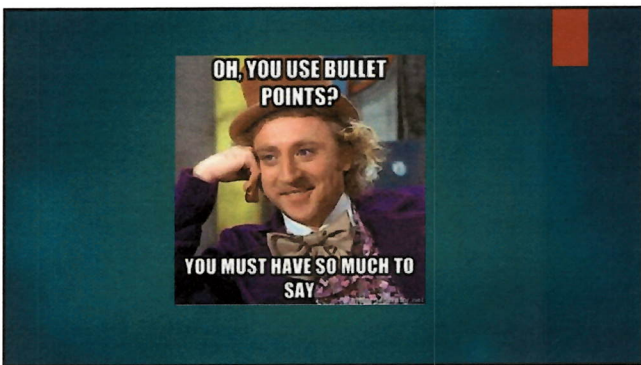
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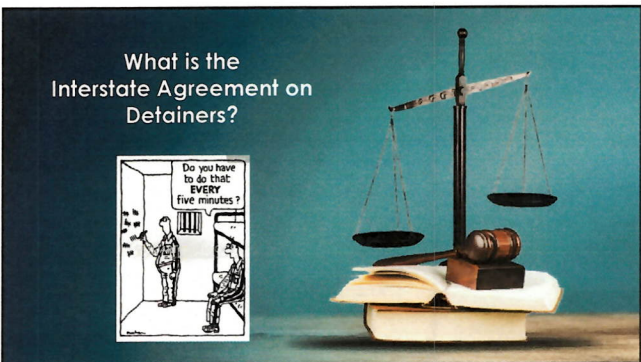
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6

The IAD is designed to


- Lay out the duties of a custodial authority in a "sending state" and a prosecutor in a "receiving state" when a detainee for an unfired criminal charge has been lodged on a prisoner who is currently in the sending state's custody, and:
- **Sending State:** state where defendant is incarcerated.
- **Receiving State:** state that has charges against defendant that it wishes to try.
- **Provision of the ultimate speedy trial right.** It is designed to make sure that the matter is resolved in a "speedy" manner by allowing the prisoner to move for dismissal with prejudice when the time limits are not met.
- The IAD represents the way the Sixth Amendment right to a speedy trial works practically when the defendant is incarcerated in a state other than the one that wants to try him or her.
- **It is very RULE intensive and if you don't play by the rules, you lose, and your case gets dismissed.**

7

- First proposed and drafted as a "model law" by the National Center for Interstate Compacts of the Council of State Governments in 1956.
- The IAD works because the model law has been promulgated as the governing law in the jurisdictions that are "signatory" to the Agreement.
 - Be aware that there are some variations in jurisdictions.

8

IAD MEMBER STATES



- The IAD is a compact entered into by almost all the states, the District of Columbia, and the United States, including the U.S. Virgin Islands.
 - **Does not include Louisiana and Mississippi.**

9



Differences between IAD and ICAOs:

- The IAD relates to prisoners against whom a detainer has been filed not releaseses subject to parole or probation.
- No binding interstate rules for the IAD.
- No national authority to promulgate and enforce rules, but ...
- 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."

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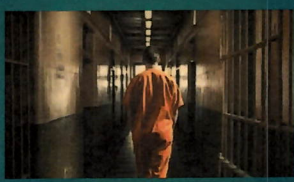
What makes the IAD work:

- Uniform State Laws
- Uniform IAD Forms
- Cooperation and Networking between folks like you:
 - Like NAEO



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Who does the IAD apply to?



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The IAD applies to a defendant who "has entered upon a term of imprisonment in a penal or correctional institution of a party state"

- Remember that the IAD is interpreted by courts in all signatory jurisdictions:
 - It is generally held to apply only to inmates of prisons, not county jails, especially if pre-trial, but see a mixed opinion.
 - It is often applied to state juvenile facilities.
 - Usually, rights and duties under IAD end when term of imprisonment ends (e.g., release to parole).



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IAD: The Basics

- The defendant must have had filed against them:
 - "an untried indictment, information or complaint."

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IAD: The Basics

- "Untried" usually means new criminal charges, not:
 - A violation of probation or parole;
 - Someone wanted to testify solely as a witness;
 - Someone with a pending civil matter such as civil commitment;
 - Someone facing sentencing only (maybe).

15

IAD: The Basics

- There must have been: "a detainer . . . lodged against the prisoner."
- "Detainer" is not defined in the IAD.
- Generally, it is a request by one jurisdiction for another jurisdiction to hold a prisoner for the first jurisdiction, once the prisoner's obligation to the holding jurisdiction is fulfilled.
 - An arrest warrant alone is not enough.
 - In some jurisdictions, written notice that there are pending charges is enough.
- The sending state has no power to force the other jurisdiction to file a detainer, nor it is not required by law. However, speedy trial implications may apply.

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IAD: The Basics

- **IAD shouldn't be used in every case:**
 - If you're working to bring someone out of LA or MS - use Executive Agreement.
 - It probably shouldn't be used for capital cases -
 - The requirement to return the defendant to the holding jurisdiction is usually problematic.
 - The terms of the IAD, however, do not preclude it.
 - By its terms, it doesn't apply to mentally ill defendants.

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IAD: The Basics

- **Federal Prisoners**
 - When a defendant is being held in a Federal facility, and the state wants to bring the defendant in temporary custody, the federal government has a preference to the IAD, and the Bureau of Prisons uses its own version of the IAD form.
 - In theory, where the prosecutor wanting temporary custody is a state or a foreign country, the state or foreign country can use the IAD. In practice, however, most state and foreign prosecutors will obtain temporary custody through the usual means of extradition and prosecution executed by US Marshals, which is the advantage of de jure custody that permits it to control and allocate resources to the state or foreign jurisdiction.



18

ARTICLE III vs. ARTICLE IV
THE INITIATION GAME

- > ARTICLE III: INMATE INITIATES THE REQUEST
- > ARTICLE IV: THE PROSECUTOR INITIATES THE REQUEST

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ARTICLE III



23

Article III:
The Prisoner Decides to Invoke the IAD
"Inmate-Initiated" or "Article III IAD"

- > When the prisoner does so (in writing, on a form):
 - > The prison "shall forthwith" notify the prosecutors and courts in all jurisdictions within that state with a detainer on file of the request ; and
 - > Certify to those jurisdictions certain information about the sentence:
 - Its term;
 - The amount of time already served;
 - Any applicable good time earned;
 - The dates of release eligibility and expiration, and
 - The identities of any other jurisdiction in that state that has placed a detainer.

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When the Prosecutor gets Notice of the Request

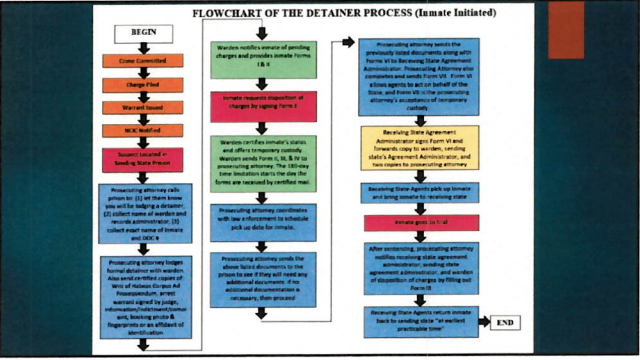
- The prosecutor must offer to accept temporary custody, with the approval of the court, agree to return the prisoner "immediately" upon completion of the case (trial and sentencing); and notify the prison of the outcome of the trial and sentence imposed. Lodge a detainer for any unfinished prison term.
- No extradition is needed because an IAD request by a defendant is a two-way waiver.
- They must bring the defendant to trial within 180 days of receipt of demand by certified mail. The 180 day clock starts the day the receiving state receives the certified demand. **KEEP THE ENVELOPE!** Failure to do so requires, upon motion of the defendant, dismissal with prejudice.
 - Trial on the merits can't be granted for good cause.
 - The defendant can't fall the time by their own actions.
 - Prisoner always generally not prejudiced by failure of prison receiving state to comply with the requirements.

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Self-Help

- In cases where defendants use "self-help" to request speedy disposition, such as by sending letters to the prosecutor rather than by using the standardized forms system, courts have imposed a requirement of "substantial compliance" with the requirements:
 - Service to both the prosecutor and proper court.
 - Compliance with the Certification of Inmate Status requirements (as contained in Form 3).
 - What does this mean for you?
 - Log and track "self-help" forms you receive.
 - If you aren't sure, ask someone!

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Article IV:
The Prosecutor Decides to Invoke the IAD
"Prosecutor-Initiated IAD" or "Article IV IAD"

- If the prisoner refuses to ask for final disposition? Is that the end of the story? Not necessarily.
- The prosecutor can also propose to take the prisoner into temporary custody upon his or her own motion.
- Prison officials must again, certify the facts of the sentence and give notice to all other jurisdictions in that state.
- Article IV requests by a prosecutor have some significant differences from Article III requests by a prisoner:
 - There must be at least 30 days from the time the Article VI request for temporary custody is received and the date the prisoner is picked up.
 - The trial must be commenced within 120 days "of the arrival of the prisoner in the receiving state" or the defendant can move for dismissal with prejudice. The IAD sets no time limit to bring the defendant back.
 - Article IV requests do not operate as a waiver of extradition.

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**ARTICLE IV:
ADDITIONAL REQUIREMENTS**

- The state that apprehends a prisoner must permit the prisoner the time to get to his or her consulate in the receiving state to seek final disposition.
 - The prosecutor is the one to seek this remedy.
 - The government is not required to give independent notice to the consulate.
 - Independent notice of every case is not required.
 - The state can refuse to file request that the Governor has not attempted to complete the process.
- In *Quinn v. State of New York*, 100 N. Ct. 203 (1980), the Supreme Court held that a state can't require a prisoner to get to the consulate in the receiving state and raise the issues of identity with the consulate. The state can't require a prisoner to get to the consulate in the receiving state, and whether the papers are in order just before the prisoner's departure.
- The state can't require the right to require that a Governor's warrant is issued.
- There can't be a requirement to attend an initial hearing.
- A prisoner can't be held in custody if the state can't get a warrant from the consulate.
- The state can't require a prisoner to get a permit to get to the consulate in the receiving state to get the permit to get to the consulate.

30

ARTICLE III vs. ARTICLE IV

- Under a prosecutor initiated IAD transfer there is no waiver. This means:
 - Receiving state will need to hold an extradition hearing and either the defendant will waive extradition, or the sending state will need a Governor's Warrant to return the defendant to finish original sentence.
 - Sending state will need to hold an extradition hearing and either the defendant will waive extradition, or the receiving state will need a Governor's Warrant to return the defendant to serve remaining sentence or any consecutive sentence imposed.

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ARTICLE III vs. ARTICLE IV

NEWS
Harvey Weinstein appears in court just days after being transferred to Rikers Island



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FORM VII vs. FORM VIII

- Under a prosecutor initiated IAD transfer, the prosecutor must fill out Form VIII to accept temporary custody of the inmate.
- Not necessary for inmate initiated as the prosecutor has filled out Form VII.

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Anti-shuttling Provision

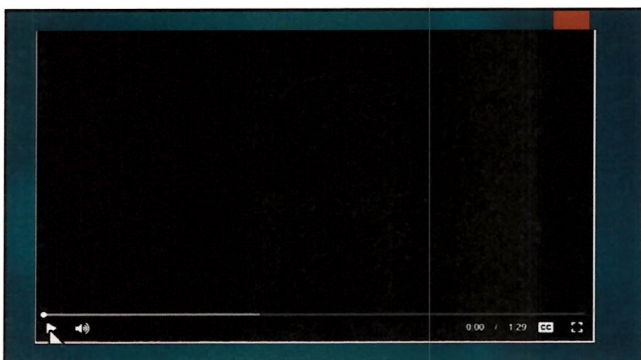
- Trial must be completed in all affected jurisdictions within the receiving state prior to return:
 - U.S. Supreme Court cases have construed the Anti-shuttling Provision strictly in favor of the defendant.
 - Applies only to jurisdictions that have detainers in place when the defendant re-enters the receiving state.
- Return of the defendant to the sending state prior to completion of the trial on a particular set of pending charges requires the court to enter a dismissal with prejudice.
 - Violating Anti-shuttling, along with failure to bring the defendant to trial within the required time are the only penalties specified in the IAD. (Includes refusal to take temporary custody.)

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SPEEDY TRIAL PERIODS

- Under an inmate initiated transfer, you have 180 days from the date you receive the notice by certified mail.
- Under a prosecutor initiated transfer, you have 120 days from the date the inmate appears in Court for the first time in the receiving state.
- It is important to make sure that you make a full record about chargeable and excludable time.

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- If a defendant is convicted and sentenced to incarceration, they are to be returned to the sending state to complete their initial sentence, there before serving the receiving state sentence.
- For this reason, when a prisoner is close to being released in the sending state, it is often more prudent to wait until they are available due to parole, supervised release or expiration and to use extradition. Just be careful of the speedy trial implications on this.
- This being said, nothing precludes a defendant with an imminent release (e.g. less than 180 days) from applying for final disposition under the IAD.
- In general, however, the IAD is no longer effective once the term of imprisonment has ended, so the requirement to return the defendant likely ends, and the right to move for dismissal if the 180 days has passed [after the release date] probably does as well.
 - In those cases, the Sending State will send a letter withdrawingly detainer when their sentence is completed.

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Trial by Other Jurisdictions in the Receiving State

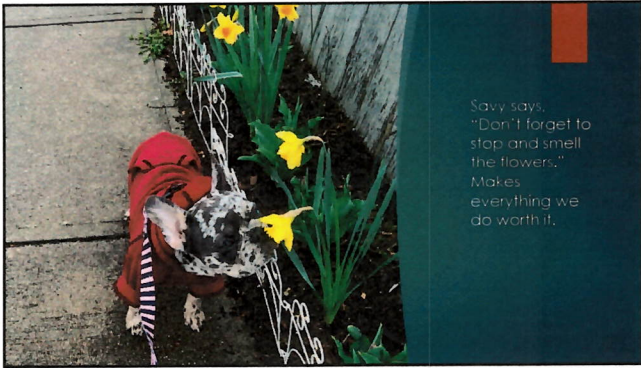
- As noted, upon return to the receiving state, the prisoner must be tried on all pending charges within that state for which a detainer had been lodged prior to the prisoner's return to the jurisdiction.
 - Custodial authority in sending state is required to notify all jurisdictions in the receiving state that have filed detainers of the transfer.
 - They are not required to notify those receiving state jurisdictions that have "not" filed detainers, but "do" have pending charges or warrants.
 - Other jurisdictions would file a FORM VIII advising the sending state of their intent to try the defendant once the original jurisdiction has completed its case.

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Where a detainer has not been lodged by a receiving state jurisdiction, but they seek to try the defendant while he or she is in the receiving state, things are not as clear:

- Article V(d) appears to preclude trial in jurisdictions where a detainer has not been lodged, but does not set a penalty. Further, generally under criminal procedure, as long as the defendant is within the jurisdiction, they can be tried.
- The defendant may also want to clear up all detainers in the receiving state to avoid having to go back to prison in the sending state only to return under the IAD once a detainer has been lodged.
- IAD Administrators can be helpful in urging the various jurisdictions to communicate to solve the issue:
 - By the new jurisdiction filing a detainer.
 - By getting consent from the defendant, etc.
 - "Duty to Return"

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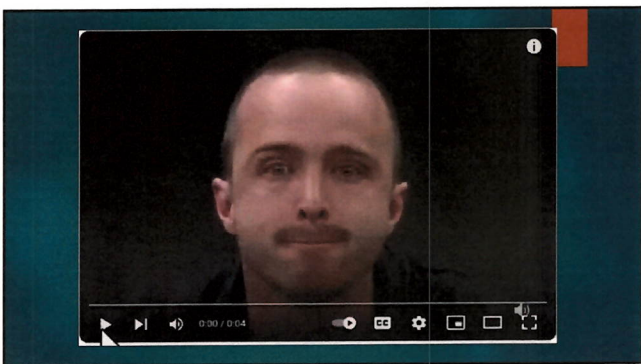


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RECENT DECISIONS

- *Amer v. New Jersey*, U.S. Supreme Court denied certiorari in February 2024, letting stand New Jersey's decision that a defendant is always "unable to stand trial" under Article VI(a) of the Interstate Agreement on Detainers while a pretrial motion is pending; and (2) that a defendant has been "brought to trial" within 180 days of his request for final disposition of charges under Article III(a) of the agreement at the point when jury selection begins.
- *Fex v. Michigan*, 507 U.S. 43 (1993): the 180-day time period in Article III(a) of the IAD does not commence until the prisoner's request for final disposition of the charges against him has actually been delivered to the court and prosecuting officer of the jurisdiction that lodged the detainer against him.

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The Policy Basis for the IAD is Set Out in Article I

- Helping to alleviate the difficulties in securing a speedy trial [Sixth Amendment Rights] when a person is already incarcerated.
- Removing "uncertainties which obstruct programs of treatment and rehabilitation" such as the eligibility for certain programing, work release, minimum security or even parole.
- Encouraging cooperation between jurisdictions.
- Not stated, but equally true, the procedures of the IAD also offer:
 - A chance for a defendant to make a pitch for concurrent sentencing for the convictions in both jurisdictions.
 - An opportunity for prosecutors to bring a defendant to trial while witnesses are still available and memories fresher, and to offer victims a quicker resolution.

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COLLABORATION



How do we do all this?

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SCENARIO # 1

- INMATE INITIATES UNDER ARTICLE III, AND SIGNS FORM II WAIVING EXTRADITION.
- DEFENDANT GETS TO RECEIVING STATE AND SEEKS TO WITHDRAW THE WAIVER UNDER FORM II.
- CAN HE DO THAT?


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SCENARIO # 2

- INMATE INITIATES UNDER ARTICLE III, AND SIGNS FORM II WAIVING EXTRADITION.
- DEFENDANT'S CASE GETS DISMISSED IN RECEIVING STATE.
- RECEIVING STATE ERRONEOUSLY RELEASES DEFENDANT WHO MUST RETURN TO THE SENDING STATE.
- WHAT SHOULD YOU DO?
- WHAT IF INMATE IS FOUND IN RECEIVING STATE? WOULD FORM II WAIVER STILL BE SUFFICIENT?

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QUESTIONS?



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