

[CAPTION]

MOTION TO DISMISS DETAINER

The Defendant, by counsel, respectfully requests this Court, to dismiss the detainer in the above-captioned cause with prejudice pursuant to the Interstate Agreement of Detainers, I.C. 35-33-10-4. In support of the Motion, the Defendant states the following:

1. The Defendant is presently serving a [insert length of sentence] at the [insert facility] in [insert State] for [insert convictions].
2. On [insert date], the State of Indiana charged the Defendant with [insert offense(s)], and this Court issued an Arrest Warrant for the Defendant.
3. The receipt of the Arrest Warrant was acknowledged by the [insert facility] officials on [insert date]. *See attached copy of Acknowledgement/ Release herein incorporated and referenced as Exhibit A.*
4. On [insert date], the Defendant was served with a copy of the detainer and was provided Interstate Agreement on Detainer forms, with which he could request a formal disposition of the charges. *See Attached Certification herein incorporated and referenced as Exhibit B.*
5. On [insert date], the Defendant submitted to the institutional officials at the [insert facility] the appropriate Interstate Agreement on Detainer forms, thereby requesting that this Court and the local prosecutor take further action in relation to the pending charges.
6. The Defendant's Request was sent certified mail to both the clerk of the court and the Prosecuting officials for [insert county], Indiana, with delivery being made to the appropriate parties on [insert date]. *See attached copies of certified mail receipts herein incorporated and referenced as Exhibit C.*
7. Article III of the Interstate Agreement on Detainer Act provides that:

[w]henever a person has entered upon a term of imprisonment . . . and
whenever. . 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 ... 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officials jurisdiction within notice of the place of his imprisonment and his request for a final disposition.

8. More than 180 days have passed without further action being taken by the State of Indiana since the receipt of the Defendant's Request. Because the Defendant has complied with I.C. 35-33-10-4 and the State has failed to return and prosecute the Defendant within 180- days, the charges against him must be dismissed with prejudice as mandated by Article V(3) of the Interstate Agreement on Detainers Act, which states the following:

[i]f 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 by Article II. . . the appropriate Court . . . shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to dismiss the detainer in the above-captioned cause with prejudice, and for all other relief just and proper in the premises.

(Signature)

REFERENCES

CASEBANK P.2

I.C. 35-33-10-4, Article 3 (Agreement of Detainers)

CASE LAW

Howard v. State, 755 N.E.2d 242 (Ind.Ct.App. 2001) (IAD rather than CR 4 applies to defendants jailed in another State).

Alabama v. Bozeman, 121 S.Ct. 2079 (2001) (the Interstate Agreement on Detainers, Article IV(e) (see IC 35-33-10-4, Article 4(e)) bars further proceedings against a defendant who is taken from imprisonment in one jurisdiction to another jurisdiction for purposes of a trial and is returned to the first jurisdiction before the trial; charges dismissed).

State v. Greenwood, 665 N.E.2d 579 (Ind. 1996) (because the trial court dismissed charges with prejudice and ordered the Defendant to be returned to Illinois, "anti-shuffling" provision of IAD protected the Defendant from subsequent prosecution even if the trial court was incorrect in its decision; the plain language of IC 35-33-10-4, Art. 3(d), requires dismissal with prejudice if prisoner is returned to original place of imprisonment prior to trial).

Gilbert v. State, 982 N.E.2d 1087 (Ind.Ct.App. 2013) (in question of first impression, in denying Defendant's motion to dismiss, trial court did not violate the "anti-shuffling" provision of the Interstate Agreement on Detainers when Defendant was returned to the state of origin (Kentucky) after pleading guilty to Indiana charges but before the court entered judgment and sentenced Defendant).

Robinson v. State, 863 N.E.2d 894 (Ind.Ct.App. 2007) (arrest warrant which was based on failure to appear was not a detainer based on an untried information that would trigger IAD). See also Crawford v. State, 669 N.E.2d 141 (Ind. 1996).

Fex v. Michigan, 507 U.S. 43, 113 S.Ct. 1085, 122 L.Ed.2d 406 (1993) (IAD's 180-day time limit for bringing prisoner to trial after he has requested disposition of outstanding charges does not begin to run until request actually reaches proper authorities in jurisdiction where charges are pending, and not when request is sent). See also Scrivener v. State, 441 N.E.2d 954 (Ind. 1982).

Daher v. State, 572 N.E.2d 1304 (Ind.Ct.App 1991) (Interstate Agreement on Detainers applies only to defendants who have been convicted and are serving sentences in sending State, it does not apply to defendants who are imprisoned awaiting trial).

Thompson v. State, 687 N.E.2d 225 (Ind.Ct.App. 1997) (IAD does not apply to probation violations, even where violation is based on a commission of crime).

Conn v. State, 831 N.E.2d 828 (Ind.Ct.App. 2005) (I.C. 35-33-10-4 Art. III(a) provides 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; here, the matter was continued without the presence of the Defendant, the Defendant's inability to learn of the trial court's reason for the length of his continuance at the time of its issuance precludes an honest review of whether there was good cause to extend the Defendant's trial 102 days beyond his IAD deadline; charges dismissed).

Williams v. State, 533 N.E.2d 1193 (Ind. 1989), *denial of habeas corpus aff'd*, 951 F.2d 353 (the Defendant waived time requirement of Interstate Agreement on Detainers in this section when one of his codefendants moved for a continuance in open court to obtain discovery material within five days of

expiration of the time period, without the Defendant's objection, where the Defendant was present with counsel and all parties knew they were near expiration of the time period).

New York v. Hill, 120 S.Ct. 659, 145 L.Ed.2d 560 (2000) (defense counsel's agreement to a trial date outside the time period required by Article III of the Interstate Agreement on Detainers waived the Defendant's speedy trial rights under the IAD; more broadly, this case suggests that the Defendant's right to a speedy trial in general is among those rights which may be waived by action of counsel without a personal, informed waiver by the Defendant).

Vaden v. State, 712 N.E.2d 522 (Ind.Ct.App. 1999) (I.C. 35-33-10-4 (Article 6) provides that when computed 180 days imposed by Article 3, running of the time periods shall be tolled whenever and for as long as a prisoner is unable to stand trial, as determined by the court, the defendant should not be able to start 180-day period in any number of jurisdictions, and then watch them "ring out" one by one while he is held in first jurisdiction that was able to set trial date).

Bowling v. State, 918 N.E.2d 701 (Ind.Ct.App. 2009) (where there is no evidence that speedy trial request was delivered by the prison to the prosecutor, Defendant was not entitled to discharge).