

[OUT OF STATE CAPTION]

DEMAND FOR TRIAL

(Interstate Detainer)

The Defendant in the above-entitled cause enters a demand for trial pursuant to Article 3 of the Interstate Agreement of Detainers, I.C. 35-33-10-4. In support of this demand, the Defendant states the following:

1. On [insert date], the State of [insert State] charged the Defendant in the above-captioned cause with [insert offense(s)].

2. I am presently incarcerated in the [insert State DOC facility] in [insert address] for my convictions of [insert convictions].

3. I am serving [# of year sentence], of which I have served [insert # of years, # of months, and # of days], as of the date of the Motion.

4. The length of my remaining term, as calculated by the Department of Corrections is [insert # of years, # of months, and # of days].

5. I hereby request that a final disposition be made of the following [indictment/information] now pending against me: [insert charges and cause numbers].

6. Failure to take action in accordance with the Agreement on Detainers, to which your State is committed by law, will result in the invalidation of the [indictment/information].

7. I hereby agree that this request will operate as a request for final disposition of all untried [indictments/informations] 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 with respect to any charge or proceeding contemplated hereby or included herein, and a waiver of extradition to your State to serve any sentence there imposed upon me, after or during completion of my term of imprisonment in Indiana. I also agree that this request shall constitute consent by me to the production of myself in any court where my presence may be required in order to effectuate the purposes of the Agreement on Detainers and further consent voluntarily to be returned to the institution in which I now am confined.

8. The required Certificate of Inmate Status is attached.

9. [Select appropriate statement]

a. My counsel is [insert name and address of attorney].

b. I request the Court to appoint counsel.

WHEREFORE, Defendant demands trial in this cause within 180 days of the date of this demand, pursuant to Article 3 of the Interstate Agreement of I.C. 35-33-10-4, and for all other relief just and proper in the premises.

(Signature of Defendant)

DATE: [insert date of Motion]

REFERENCES

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I.C. 35-33-10-4, Article 3 (Agreement of Detainers; the notice and request for final disposition 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 prosecution official and court by registered or certified mail, return receipt requested).

I.C. 35-33-10-5 (concerning prisoners confined in a Federal institutions facing charges in Indiana)

CASE LAW

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 commission of crime).

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

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).

Williams v. State, 533 N.E.2d 1193 (Ind. 1989), *denial of habeas corpus affirmed* 951 F.2d 353 (defendant waived time requirement of Interstate Agreement on Detainers in this section when one of his codefendants moved for continuance in open court to obtain discovery material within five days of expiration of the time period, without defendant's objection, where defendant was present with counsel and all parties knew they were near expiration of time period).

New York v. Hill, 120 S.Ct. 659, 145 L.Ed2d 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).

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, and the Defendant's inability to learn of the trial court's reason for length of his continuance at 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).

State v. Greenwood, 665 N.E.2d 579 (Ind. 1996) (Because the trial court dismissed charges with prejudice and ordered D to be returned to Illinois, "anti-shuffling" provision of IAD protected defendant from subsequent prosecution; 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 him).

Vaden v. State, 712 N.E.2d 522 (Ind.Ct.App. 1999) (IAD provides that when computing 180 days imposed by Article 3, running of time periods shall be tolled whenever and for as long as prisoner is unable to stand trial, as determined by the court. I.C. 35-33-10-4(Article 6); 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).

Alabama v. Bozeman, 121 S.Ct. 2079 (2001) (IAD 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).

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).