
 Good Life. Great Mission. <hr/> DEPT OF CORRECTIONAL SERVICES	POLICY SPECIAL SERVICES – INTERSTATE and INTRASTATE DETAINERS , DISPOSITION and UNTRIED CHARGES		
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EFFECTIVE: December 31, 2020
 REVISED: August 31, 2021


SUMMARY of REVISION/REVIEW

GENERAL – Language updated. PROCEDURE – I.A. – Language updated. I.A.1. – Language updated. I.B.1. – Language updated. I.C.2. – Language updated.

APPROVED:



Scott R. Frakes, Director
 Nebraska Department of Correctional Services

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PURPOSE

The policy identifies procedures for the Nebraska Department of Correctional Services (NDCS) inmates and prosecutors to expedite any untried Indictments, Information, or Complaints.

GENERAL


The Interstate Agreement of Detainers governs procedures for expediting untried Indictments, Information, or Complaints pending within Nebraska courts or courts outside the state of Nebraska. Nebraska became signatory to the Interstate Agreement on Detainers in 1963; the text of same may be found under Nebraska State Statute section §29-759.

Nebraska Statutes §29-3801 through §29-3809 details procedures regarding the expedited disposition of untried Indictments, Information, or Complaints pending in Nebraska courts.

PROCEDURE

I. INTERSTATE AGREEMENT ON DETAINERS

- A. When an out-of-state prosecutor seeks to expedite the disposition of an untried charge lodged against a Nebraska prisoner, the prosecutor may notify NDCS as an institution in which the prisoner is serving a sentence by filing a detainer. The NDCS Special Services Supervisor/designee, serving as Detainer Administrator is responsible to ensure all detainees are appropriately entered and/or provided to NDCS records staff. Upon receipt of a detainer request from an out-of-state jurisdiction, the Detainer Administrator or designee will have two business days (48 hours) to enter a detainer into the Corrections Tracking System and the following steps should be taken in accordance with the rules and regulations set forth in the Interstate Agreement on Detainers.
 1. Special Services staff will inform the inmate of the detainer and serve and Interstate Agreement on Detainers Form I, Notice of Untried Indictment, Information or Complaint and Right to Request Disposition (Attachment A) and Interstate Agreement on Detainers Form II, Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictment, Information or Complaints (Attachment B). The Special Services staff member or designee will have five business days to serve the detainer to the inmate from the date of detainer entry onto the Corrections Tracking System.
 2. Staff will inform the inmate that he/she or the prosecutor may request disposition of charges under the Interstate Agreement on Detainers.
 3. When a prosecutor makes a request for temporary custody, the inmate should be informed that he/she may oppose this request by notifying the Governor in writing that he/she objects to transfer to the requesting state.
 4. The Governor has 30 days to review the objection to the transfer to the requesting state.
 5. The inmate should be informed that he/she has the right to file a Writ of Habeas Corpus in District Court requesting a pre-transfer hearing prior to being removed

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to the demanding state. The inmate may, however, go before a court of record and waive extradition to the demanding state.

Rights given to an inmate regarding a prosecutor's request were brought about because of Cuyler vs. Adams, 449 U. S. 433 (1981).

B. Inmate's Request


1. An inmate may request to expedite the disposition of untried out-of-state charges, when a detainer has been filed. To do so, an inmate must send a request for disposition of untried charges to the prosecutor and court having jurisdiction by certified mail, return receipt requested. Upon receipt of the registered request, a prosecutor has 180 days to bring the inmate to trial on the charges specified, dismiss them or request a continuance from the court. If the inmate makes a request for disposition to a prosecutor/court outside of Nebraska, he/she voluntarily waives extradition to the receiving state, including he/she must be returned to that state to serve any sentence imposed. When serving a detainer, staff will advise the inmate he/she will temporarily be in the custody of the receiving state, and he/she will be returned upon completion of the court proceedings. The inmate should be instructed if he/she wants to make a request for disposition of charges under the IAD, he/she should sign IAD Form I and IAD Form II. The inmate may decline to request final disposition at the time of service by refusing to sign the IAD forms. A second staff member will witness the refusal by signing the IAD forms along with the Special Services staff serving the detainer. If the inmate refuses to sign IAD Form II when served, the inmate can later write to the Special Services Supervisor, Special Services Unit, P.O. Box 94661, Lincoln, Nebraska 68509-4661 and indicate they are interested in doing so. IAD Form I and Form II will be prepared and served to the inmate for signature.

Once the inmate signs Form II indicating his/her intent to request final disposition, the Special Services Unit will prepare a trial request including: Cover letter, Certificate of Inmate Status Form III (Attachment C); and Offer to Deliver Temporary Custody Form IV (Attachment D) for proper signatures and disposition.

The forms and cover letter distributed to the prosecutor and the court in the receiving state must be sent certified mail, return receipt requested.

2. Once the prosecutor of the receiving state has received the request, he/she will make the decision as to whether to return the inmate for trial, dismiss the Complaint, Information, or Indictment, or request a continuance from the court. If the prosecutor proceeds with charges, he/she will forward to the institution, Agreement Administrator of the sending state, and inmate, Interstate Agreement on Detainers Form VII (Prosecutor's Acceptance of Temporary Custody Offered in Connection with a Prisoner's Request for Disposition of a Detainer) (Attachment G) showing his/her intention to return the inmate for trial.

Prior to the inmate's transfer to the receiving state, the prosecutor should complete the Interstate Agreement on Detainers Form VI (Evidence of Agent's Authority to Act for Receiving State) (Attachment F) and forward all copies of the same to his/her state's Agreement Administrator. The Agreement Administrator in the receiving state should then complete and distribute IAD Form VI accordingly.

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With a minimum of five business day's advance notice of the pick-up date, the Prosecutor or Sheriff's Office shall send to the Detainer Administrator via U.S. Mail or facsimile a court approved transport order. The transport order will identify the inmate by name and registration number, the transport agent, purpose of the proceeding, date of hearing and an order to hold the inmate in custody without bond and to return the inmate to the facility after the proceeding or upon disposition of the case. The Agreement Administrator will then review the file and determine if there are any conflicts with other detainees. The transport order shall be forwarded by Special Services to the facility Records Manager advising him/her that the inmate is cleared to be released to the designated agent. If a conflict is identified at the facility level, i.e. the inmate is scheduled to transfer to another facility, is medically restricted from travel, or an institution travel order is scheduled at the same time, etc., the facility Records Manager will notify the Detainer Administrator immediately. The Detainer Administrator will then coordinate an alternate pick up date with the Prosecutor. Proper identification of agents shall be required.

Department inmates shall be released only to an appointed agent who is a certified law enforcement officer acting in his/her official agency capacity. The use of private transportation companies is prohibited. The agent's identity will be verified by checking photo identification before releasing the inmate to the agent(s).

3. When the department mails an inmate's request for disposition of charges in another state, the request should be made to all jurisdictions having charges on file in that state. All prosecutors in the receiving state who intend to prosecute their cases will use Interstate Agreement on Detainers Form VII (Prosecutor's Acceptance of Temporary Custody Offered in Connection with a Prisoner's Request for Disposition of a Detainer). (Attachment G)
4. When the inmate is returned from the receiving state, the prosecutor involved should complete and send Interstate Agreement on Detainers Form IX (Prosecutor's Report on Disposition of Charges). (Attachment I)

C. Prosecutor's Request

1. Upon receipt of Interstate Agreement on Detainers Form V (Request for Temporary Custody), (Attachment E) from a prosecutor outside of Nebraska, the inmate should be interviewed and advised that a demand for his/her temporary custody has been made upon the State of Nebraska.
2. The inmate should be served with Interstate Agreement on Detainers Form II (Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictments, Information or Complaints) (Attachment B) outlining the options open to him/her under the Detainer Act.
 - a. The inmate may execute Form II, after which the Agreement Administrator will notify the demanding state the inmate is available to be taken into temporary custody.
 - b. The inmate has a right to petition the Governor, requesting the Governor deny custody to the demanding state. Should the inmate desire to exercise

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this right, he/she should forward a letter to the Governor of Nebraska, State Capitol Building, Lincoln, Nebraska 68509.

- c. The inmate has the right to be brought before the court of record for the purpose of being informed of the charges against him/her; that the inmate has a right to legal counsel, and if at that time the inmate states he/she wishes to test the legality of the detainer, the court shall set a time and place for the hearing.

During the Habeas hearing, the court will not inquire into an inmate's guilt or innocence. The court will only consider:

- 1) That the information, complaint or indictment substantially charges the person demanded with having committed a crime under the law of the demanding state.
- 2) That the documents submitted by the demanding state are in legal form.
- 3) That the identity of the inmate has been established by the demanding state.

II. STEPS


- A. If the inmate elects to sign IAD Form II, the Special Services Unit will prepare Interstate Agreement on Detainers Form III (Certificate of Inmate Status) (Attachment C) and IAD Form IV (Offer to Deliver Temporary Custody) (Attachment D) along with a cover letter to the prosecutor of the demanding Court by certified mail, return receipt requested.

The prosecutor should return Interstate Agreement on Detainers Form VI (Evidence of Agent's Authority to Act for Receiving State). (Attachment H) The same procedure will be used for IAD Form VI as previously outlined under Inmate's Request.

When the inmate is returned from the demanding state, the prosecutor involved should complete and return Interstate Agreement on Detainers Form IX Prosecutor's Report on Disposition of Charges.

- B. If the inmate elects to file a Writ of Habeas Corpus, the prosecutor in the demanding state and the Governor of the sending state should be notified immediately. The prosecutor of the demanding state should be sent a cover letter stating inmate's intention, and Interstate Agreement on Detainers Form III (Certificate of Inmates Status) (Attachment C) by certified mail, return receipt requested. The Governor of the sending state should be sent a cover letter with the following attachments, verifying the demanding state's request for temporary custody: court commitments, warrant of arrest, information, or complaints, IAD Form V (Request for Temporary Custody) (Attachment E) and IAD Form III (Certificate of Inmate Status) (Attachment C).

The Nebraska Department of Justice (Attorney General's Office) should arrange to have the inmate brought before the District Court for a pre-transfer hearing prior to his/her removal to the demanding state.

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Once the Governor and the court have granted the demanding state’s request for temporary custody, Interstate Agreement on Detainers Form IV (Offer to Deliver Temporary Custody) (Attachment D) should be prepared and delivered to the prosecutor of the demanding state, with the following attachments:

1. Governor’s authorization letter from the sending state
2. Court order from the District Court.

Unless previously received, the prosecutor should then send Interstate Agreement on Detainers Form VI (Evidence of Agent’s Authority to Act for Receiving State) (Attachment F) and forward the same to his/her state’s IAD Agreement Administrator for completion and distribution.

When a prosecutor from a demanding state has made a request for an inmate under Article IV, any other prosecutors having charges in that state should use Interstate Agreement on Detainers Form VIII (Prosecutor’s Acceptance of Temporary Custody Offered in Connection with Another Prosecutor’s Request for Disposition of a Detainer) (Attachment H). All existing detainers from the demanding state must be disposed of prior to subject’s return.

No provision of the Interstate Agreement on Detainers, and no remedy made available by the IAD shall apply to any person who is adjudged to be mentally ill.

III. DISPOSITION AND UNTRIED CHARGES, IN-STATE CHARGES


- A. The prosecutor responsible for pending Indictments, Information, or Complaints lodged against an in-state prisoner is not required to file a detainer. A detainer needs to be filed only if the prosecutor elects to seek temporary custody or custody or availability of the prisoner. A detainer is also not required for a prisoner to assert his or her right to speed trial. Neb. Rev. Stat. §29-3804, §29-3803. State v. Ebert, 1990, 235 Neb. 330, 455 N.W.2d 165.

Upon receipt of a detainer involving an untried indictment, information or complaint, The Detainer Administrator or designee will have two business days to enter a detainer into the Corrections Tracking System.

The Detainer Administrator or designee will inform the inmate of the detainer and serve Disposition of Untried Charges Forms I - Notice of Untried Indictment, Information or Complaint and of Right to Request Disposition (Attachment J), and Form II - Inmate’s Notice of Place of Imprisonment and Request for Disposition of Indictments, Information and Complaints (Attachment K). The Special Services staff member or designee will have five business days to serve the detainer to the inmate from the date of detainer entry onto the Corrections Tracking System and will make certain that the inmate fully understands that both he/she and the prosecutor may request disposition of charges under the Statutes.

1. Inmate’s Request

A request by an inmate for disposition of charges must be mailed by certified mail, return receipt to the prosecutor and court having jurisdiction over the charges. Upon receipt of the registered request, a prosecutor has 180 days to bring said

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inmate to trial on the charges specified, dismiss them, or request a continuance from the court. The inmate is on temporary custody to the county having charges against him/her and that he/she will be returned upon completion of court proceedings. The inmate may decline to request final disposition at the time detainer Form II is presented by refusing to sign Form II. A second staff member will witness the refusal by signing Form II along with the Extradition and Warrant Officer serving the detainer. The inmate should be instructed that if he/she decides at a later date to make a request for disposition of the charges, he/she should notify the Agreement Administrator, Special Services Unit, using an Inmate Interview Request form.


Once the inmate signs Form II, the Special Services Unit will prepare Form III - Certificate of Inmate Status (Attachment L), Form IV - Offer to Deliver Temporary Custody (Attachment M), or Form V - Request for Temporary Custody (Attachment N). The forms and cover letter which are distributed to the prosecutor and the court must be sent by certified mail, return receipt requested.

Once the prosecutor has received the request, a decision will be made whether to return said inmate for trial, dismiss the complaint, or request a continuance from the court. If the prosecutor proceeds with charges, he/she will forward to the Agreement Administrator Disposition of Untried Charges Form VII - Prosecutor's Acceptance of Temporary Custody Offered in Connection with a Prisoner's Request for Disposition of a Detainer (Attachment O) showing the intention to return said inmate for trial.

With a minimum of five business day's advance notice of the pick-up date, the Prosecutor or Sheriff's Office shall send to the Detainer Administrator via U.S. Mail or facsimile a court approved transport order. The transport order will identify the inmate by name and registration number, the transport agent, purpose of the proceeding, date of hearing and an order to hold the inmate in custody without bond and to return the inmate to the facility after the proceeding or upon disposition of the case. The Agreement Administrator will then review the file and determine if there are any conflicts with other detainees. The transport order shall be forwarded by Special Services to the facility Records Manager advising him/her that the inmate is cleared to be released to the designated agent. If a conflict is identified at the facility level, i.e. the inmate is scheduled to transfer to another facility, is medically restricted from travel, or an institution travel order is scheduled at the same time, etc., the facility Records Manager will notify the Detainer Administrator immediately. The Detainer Administrator will then coordinate an alternate pick up date with the Prosecutor. Proper identification of agents shall be required.

Prior to the inmate's return from the receiving county, the prosecutor involved should complete and forward to the Detainer Administrator Disposition of Untried Charges Form IX - Prosecutor's Report on Disposition of Charges (Attachment P).

Escape from custody by a prisoner subsequent to execution of a request for final disposition of any untried indictment, information, or complaint shall void the request.

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2. Prosecutor's Request

The Prosecutor in a city or county in which an untried Indictment, Information, or Complaint is pending shall be entitled to have temporary custody of a prisoner, against whom the Prosecutor/Sheriff has lodged a detainer, upon presentation of a court approved Order of Transport to the Special Services Unit.

Upon the return of the prisoner from court, the Prosecutor should complete the Disposition of Untried Charges Form IX - Prosecutor's Report on Disposition of Charges (Attachment G) to the Agreement Administrator of the Nebraska Department of Correctional Services.

3. Transportation Agents

Only certified law enforcement officers or correctional officers acting in their official capacity will be accepted as agents. The use of private transportation companies is prohibited.

4. No provision of sections §29-3801 to §29-3809 and no remedy made available by sections §29-3801 to §29-3809 shall apply to any person who is adjudged to be mentally ill.

REFERENCE


I. STATUTORY REFERENCE

- A. Nebraska Revised Statutes §29-759 to §29-765, §29-3801 through §29-3809
- B. NAO Manual for Interstate Agreement on Detainers, published 1989
- C. Cuyler vs. Adams, 449 U. S. 433 (1981)

II. NDCS POLICIES – None noted

III. ATTACHMENTS

- A. Form I: Interstate Agreement on Detainers
- B. Form II: Interstate Agreement on Detainers
- C. Form III: Interstate Agreement on Detainers
- D. Form IV: Interstate Agreement on Detainers
- E. Form V: Interstate Agreement on Detainers
- F. Form VI: Interstate Agreement on Detainers
- G. Form VII: Interstate Agreement on Detainers
- H. Form VIII: Interstate Agreement on Detainers

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- I. Form IX: Interstate Agreement on Detainers
 - J. Disposition of Untried Charges, Nebraska Intrastate Detainers - Form I- Notice of Untried Indictment, Information or Complaint and of Right to Request Disposition
 - K. Disposition of Untried Charges, Nebraska Intrastate Detainers - Form II - Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictments, Information or Complaints
 - L. Disposition of Untried Charges, Nebraska Intrastate Detainers - Form III - Certificate of Inmate Status
 - M. Disposition of Untried Charges, Nebraska Intrastate Detainers - Form IV - Offer to Deliver Temporary Custody
 - N. Disposition of Untried Charges, Nebraska Intrastate Detainers - Form V - Request for Temporary Custody
 - O. Nebraska Instate Detainer Act – Form VII - Prosecutor's Acceptance of Temporary Custody Offered in Connection With A Prisoner's Request for Disposition of A Detainer.
 - P. Disposition of Untried Charges Form IX - Prosecutor's Report on Disposition of Charges
- IV. AMERICAN CORRECTIONAL ASSOCIATION (ACA) – None noted