



NEW MEXICO PUBLIC DEFENDER DEPARTMENT

Client Information Bulletin

Interstate Compact on Detainers and Requests for Final Disposition

The law on the Interstate Agreement on Detainers and Requests for Final Disposition is listed in New Mexico statute NMSA §31-5-12.

A subsection of the Interstate Compact on Detainers is the right of a state or a federal inmate that has a detainer lodged against them to request the final disposition of any untried felony charge. The purpose of this law is to permit an inmate to have all outstanding charges brought against him or her in a timely manner while he or she is serving another sentence in another state. The right to request final disposition only applies to charged, pending and untried criminal matters. It does not apply to probation or parole matters.

Pursuant to the interstate detainer law, an inmate wishing to exercise the right must:

1. Have a current detainer placed against them.
2. Be serving a sentence of incarceration with at least six months remaining.
3. Give notice to the prosecuting authority in the county the charge is pending.
4. Give notice to the court of the state in which the untried felony matter is pending.
5. The Notice requires strict adherence to the compact rules in NMSA §31-5-12.

The Request for Final Disposition paperwork must be submitted via the warden of the facility in which the inmate is housed and then sent (preferably with a return receipt requested) to the District Attorney or Prosecutor's office in the state or county that the inmate's other cases are pending.

Attached below are three sets of forms that an inmate must complete. Complete all three sets and distribute them as follows:

- Set 1 - direct to the warden of the facility in which you are currently housed.
- Set 2 – send to the District Attorney or prosecuting authority in the county or state in which you have pending felony charges.
- Set 3 – Maintained for inmate records. Make sure you date each set – as that will start the clock for your timely prosecution.


Upon receipt of the Request for Final Disposition paperwork by both the out-of-state prosecuting agent (Prosecutor or District Attorney) and the court having jurisdiction over the matter, the prosecuting authority, has 180 days to return the inmate to the relevant state and complete the prosecution. If the prosecution is not finalized within the 180 days, the case should be dismissed pursuant to the detainer law.

See the relevant statute and forms below that must be completed by the inmate.

NMSA § 31-5-12. Agreement on Detainers. Subsection on Requests for Final Disposition

Article 3 - Prisoner's Request for Final Disposition

- 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 has 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, 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. 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 Subarticle A 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 right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.
- D. Any request for final disposition made by a prisoner pursuant to Subarticle A 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 official 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 subarticle 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 Subarticle A 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 Subarticle D, 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 subarticle 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 Subarticle A shall void the request.

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	TITLE: Detainers	

AUTHORITY:

- A. Section 33-1-6, NMSA 1978, as amended
- B. Policy *CD-0010100*; *CD-040100*.

REFERENCE:

Section 31-5-12, NMSA 1978, as amended.

PURPOSE:


To ensure all inmates who are sentenced to the Corrections Department and who have charges pending against them are released to the appropriate authorities.

APPLICABILITY:

All inmates confined to the New Mexico Corrections Department and all staff dealing with records and release, including records managers and classification staff.

FORMS:

- A. IAD Form I - Notice Of Untried Indictment, Information Or Complaint And Of Right To Request Disposition Form (*CD-040501.1*)
- B. IAD Form II - Inmate's Notice Of Place Of Imprisonment And Request For Disposition Of Indictments, Informations Or Complaints Form (*CD-040501.2*)
- C. IAD Form III - Certificate of Inmate Status Form (*CD-040501.3*)
- D. IAD Form IV - Offer To Deliver Temporary Custody Form (*CD-040501.4*)
- E. IAD Form V - Request for Temporary Custody Form (*CD-040501.5*)
- F. IAD Form VI - Evidence of Agent's Authority To Act For Receiving State Form (*CD-040501.6*)
- G. IAD Form VII - Prosecutor's Acceptance Of Temporary Custody Offered With An Inmate's Request For Disposition Of A Detainer Form (*CD-040501.7*)
- H. IAD Form VIII - Prosecutor's Acceptance Of Temporary Custody Offered In Connections With Another Prosecutor's Request For Disposition Of A Detainer Form (*CD-040501.8*)

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AUTHORITY

Policy *CD-040500*

PROCEDURES

A. Receipt of Detainer:

1. The Institutional Records Manager and/or Coordinator shall indicate receipt of the Notice of Detainer in the inmate's file. The file will be properly marked with a highly visible flag. This will consist of red flag indicating "DETAINER" to be placed over the ESCAPE FLYER. The detainer documentation will be filed in Section 4 of the inmate file. CMIS will also be updated to reflect the detainer information.

If the detainer is from another state and is an untried case, the Records Manager and/or Coordinator will be responsible for submitting IAD Form I - Notice of Untried Indictment, Information or Complaint and of Right to Request Disposition Form (*CD-040501.1*) to the inmate. A copy of Form I will be maintained in the inmate's file.

2. The facility records manager and/or coordinator will immediately notify the Classification Officer of the detainer for scoring purposes. A copy of the detainer will be provided to the inmate by the facility Records Manager and/or Coordinator.
3. The facility records manager and/or coordinator will be responsible for serving the inmate with detainers from the U.S. Marshall.
4. The facility records manager and/or coordinator shall update the status of detainer semi-annually .
5. All contacts with the custodian of records for the detaining authority, (courts, District Attorney's Office, county jail, etc.) will be documented in the inmate file on a Contact Chrono Form (*CD-080102.12*) to include the full name and title of the individual with whom spoken, the date, the telephone number and a description of what was discussed.

B. Pre-Release Notification

1. The facility records manager and/or coordinator is responsible for notifying the detaining agency, in writing or by phone, of an inmate's anticipated release date 30 days prior and then again at 5 days prior to that release date. A copy of the correspondence must be placed in the inmate's file.

**C. Interstate Agreement on Detainers (IAD) – Article III (Prisoner's Request for Final Disposition)****If the inmate agrees to return,**

1. The inmate must inform the facility records manager and/or coordinator in writing of his/her intention to return to that jurisdiction for prosecution.
2. The facility records manager and/or coordinator will then issue **IAD Form II - Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictments, Information's or Complaints Form (CD-040501.2)**, **IAD Form III - Certificate of Inmate Status Form (CD-040501.3)** and **IAD Form IV – Offer to Deliver Temporary Custody Form (CD-040501.4)** to the prosecuting agency. These forms will be sent by certified mail to the prosecuting agency. The certified mail documentation shall be maintained in the inmate's file.
3. Once the prosecutor receives the above forms, the prosecuting authority must submit **IAD Form VI - Evidence of Agent's Authority to Act for Receiving State Form (CD-040501.6)** and **IAD Form VII - Prosecutor's Acceptance of Temporary Custody Offered with An Inmate Request's For Disposition of Detainer Form (CD-040501.7)** prior to assuming custody.
4. The prosecuting agency then has 180 days from receipt of the forms in which to pick up the inmate and return him/her to that jurisdiction for prosecution. The inmate must be returned after sentencing. The prosecuting agency should submit **IAD Form IX - Prosecutor's Report of Disposition of Charges Form (CD-040501.9)**.

D. Article IV " Prosecutor's Request for Final Disposition:

1. The detaining agency may request temporary custody by issuing **IAD Form V - Request for Temporary Custody Form (CD-040501.5)**.

2. The facility records manager and/or coordinator will then issue a letter to the Governor of the State of New Mexico along with IAD Form III - Certificate Of Inmate Status Form (CD-040501.3) and the detainer. The letter will indicate the prosecuting state's interest in prosecuting the inmate.
3. The Governor will have 30 days in which to grant temporary custody or take no action.
4. If no response is received, an Advisement of Rights hearing will be scheduled. The facility records manager and/or coordinator is responsible for coordinating this hearing with the local District Attorney's office. The courts will then issue an order determining the next course of action.

E. Verbal Notification of Detainers:

1. Verbal detainers will be honored for ninety (90) days. If after two (2) monthly phone calls (documented on a CHRONO) and written notice has been sent to the agency placing the verbal hold does not result in a certified copy of detainer, the agency will be notified by the Records Manager and/or Coordinator in writing that the verbal hold will no longer be honored.
2. Immediately upon notification of a verbal detainer, the Classification Officer or Facility Records staff will document the name of the individual placing the verbal detainer, the date of contact and the agency the individual is representing in the inmate's file. CMIS will be updated by facility records staff.
3. A certified copy of the detainer must be sent to the Corrections Department if the agency having pending charges wishes to be notified of the inmate's pending release.
4. If documentation has not been received after ninety (90) days, it is the Records Manager and/or Coordinator's responsibility to check with the agency issuing the verbal detainer and clear the detainer if no documentation has been received.
5. Requests to drop or continue a verbal detainer must be documented and placed in the inmate's file.
6. The facility records manager and/or coordinator is responsible for notifying the detaining agency, in writing or by phone, of an inmate's anticipated release date 30 days prior and then again at 5 days prior to that release date. A copy of the correspondence must be placed in the inmate's file.

FORM I

INTERSTATE AGREEMENT ON DETAINERS

One copy of this form, signed by the inmate and the warden, should be retained by the warden. One copy, signed by the warden should be retained by the inmate.

**NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT
AND OF RIGHT TO REQUEST DISPOSITION**

Inmate _____ No. _____ Inst. _____

NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT

Pursuant to the Interstate Agreement on Detainers (IAD), you are hereby informed that a detainer has been lodged for the following untried indictments, informations, or complaints against you concerning which the undersigned has knowledge, and the source and contents of each:

(1) Jurisdiction/Agency: _____

Crime(s) charged: _____

(2) Jurisdiction/Agency: _____

Crime(s) charged: _____

(3) Jurisdiction/Agency: _____

Crime(s) charged: _____

RIGHT TO REQUEST DISPOSITION OF CHARGES AND TO SPEEDY TRIAL

You are hereby further advised that under the IAD you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending, and the appropriate court, that a final disposition be made thereof. You shall then be brought to trial within 180 days, unless extended pursuant to provisions of the IAD, after said prosecuting officer and said court have received written notice of the place of your imprisonment and your request, together with a certificate of the custodial authority as more fully set forth in the IAD. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance

WAIVER AND CONSENT

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainees have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of trial to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the IAD and a further consent to be voluntarily returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify _____ of the institution in which you are confined.

RIGHT TO OPPOSE REQUEST FOR TEMPORARY CUSTODY

You are also advised that under provisions of the IAD the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may request your temporary custody to obtain a final disposition thereof. In that event, you may oppose such request. You may request the Governor of this state to disapprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Governor has not affirmatively consented to or ordered such delivery. You are also entitled to the procedural protections provided in state extradition laws.

_____ Dated: _____
Warden

CUSTODIAL AUTHORITY

Name: _____

Institution: _____

Address: _____

City/State: _____

Telephone: _____

RECEIVED

INMATE: _____ NO: _____ DATE: _____

(Signature)

WITNESS: _____ DATE: _____

(Signature)

(Printed Name & Title)

FORM II

INTERSTATE AGREEMENT ON DETAINERS

Six copies, if only one jurisdiction within the state involved has an indictment, information or complaint pending. Additional copies will be necessary for prosecuting officials and clerks of court if detainees have been lodged by other jurisdictions within the state involved. One copy should be retained by the inmate. One signed copy should be retained by the institution. Signed copies must be sent to the Agreement Administrators of the sending and receiving states, the prosecuting official of the jurisdiction which placed the detainee, and the clerk of the court which has jurisdiction over the matter. The copies for the prosecuting official and the court must be transmitted by certified or registered mail, return receipt requested.

INMATE'S NOTICE OF PLACE OF IMPRISONMENT AND REQUEST FOR DISPOSITION OF INDICTMENTS, INFORMATIONS OR COMPLAINTS

TO: (1) _____ Prosecuting Officer _____ (Jurisdiction)
(2) Clerk of _____ Court _____ (Jurisdiction)

And to all other prosecuting officers and courts of jurisdictions listed below in which indictments, informations or complaints are pending.

You are hereby notified that the undersigned, _____, is now (Inmate's Name & Number)
imprisoned in _____ at _____ (Institution) (City and State)

I hereby request that final disposition be made of the following indictments, informations or complaints now pending against me: _____

Failure to take action in accordance with the Interstate Agreement on Detainers (IAD), to which your state is committed by law, will result in the dismissal of the indictments, informations or complaints.

I hereby agree that this request will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainees have been lodged against me from your state. I also agree that this request shall be deemed to be my waiver of extradition to your state for any proceeding contemplated hereby, and a waiver of extradition to your state to serve any sentence there imposed upon me, after completion of my term of imprisonment in this state. I also agree that this request shall constitute a consent by me to the production of my body in any court where my presence may be required in order to effectuate the purposes of the IAD and a further consent to be returned to the institution in which I now am confined.

If jurisdiction over this matter is properly in another agency, court, or officer, please designate below the proper agency, court, or officer and return this form to sender.

The required Certificate of Inmate Status (Form III) and Offer of Temporary Custody (Form IV) are attached

_____	_____	_____
Inmate's Printed Name & Number	Inmate's Signature	Date

_____	_____	_____
Witness's Printed Name & Title	Witness's Signature	Date

FORM III
INTERSTATE AGREEMENT ON DETAINERS

In the case of an inmate's request for disposition under Article III, copies of this Form should be attached to all copies of Form II. In the case of a request initiated by a prosecutor under Article IV, a copy of this Form should be sent to the prosecutor upon receipt by the warden of Form V. Copies of this Form should be sent to all other prosecutors in the same state who have lodged detainers against the inmate. A copy may be given to the inmate.

CERTIFICATE OF INMATE STATUS

_____ (Inmate) _____ (Number)

_____ (Institution) _____ (Location)

_____ hereby certifies:
(Custodial authority)

1. The Inmate's commitment offense(s): _____
2. The term of commitment under which the inmate is being held: _____
3. The time already served: _____
4. Time remaining to be served on the sentence: _____
5. Good time earned/Good time release date: _____
6. The date of parole eligibility of the inmate: _____
7. The decisions of the state parole agency relating to the inmate: (If additional space is needed, use reverse side.) _____

8. Maximum expiration date under present sentence: _____
9. Security level/special security requirements: _____

10. Detainers currently on file against this inmate from your state: _____

Warden

Dated: _____

CUSTODIAL AUTHORITY

Name/Title: _____

Institution: _____

Address: _____

City/State: _____

Telephone: _____

FORM IV

INTERSTATE AGREEMENT ON DETAINERS

Inmate's request: Copies of this Form should be attached to all copies of Form II. Prosecutor's request: This Form should be completed after the warden has approved the request for temporary custody, expiration of the 30 day period, and successful completion of a pre-transfer hearing. Copies of this Form should then be sent to all officials who receive(d) copies of Form III. One copy also should be given to the inmate and one copy should be retained by the institution. Copies mailed to the prosecutor should be sent certified or registered mail, return receipt requested.

OFFER TO DELIVER TEMPORARY CUSTODY

TO: _____ Prosecuting Officer

(Jurisdiction)

And to all other prosecuting officers and courts of jurisdictions listed below from which indictments, informations or complaints are pending.

RE: _____ No. _____
(Inmate)

Pursuant to Article V of the Interstate Agreement on Detainers (IAD), the undersigned hereby offers to deliver temporary custody of the above-named inmate to the appropriate authority in your state in order that speedy and efficient prosecution may be had of the indictment, information or complaint which is

- described in the attached inmate's request (Form II)
- described in your request for custody (Form V) of _____
(Date)

The required Certificate of Inmate Status (Form III)

- is enclosed
- was sent to you with our letter of _____
(Date)

Indictments, informations or complaints charging the following offenses are also pending against the inmate in your state and you are hereby authorized to transfer the inmate to the custody of appropriate authorities in these jurisdictions for purposes of disposing of these indictments, informations or complaints

Offense:	County or Other Jurisdiction:
_____	_____
_____	_____
_____	_____

If you do not intend to bring the inmate to trial, please inform us as soon as possible.

_____	DATE: _____
Warden	

CUSTODIAL AUTHORITY

Name/Title: _____

Institution: _____

Address: _____

City/State: _____

Telephone: _____

FORM V

INTERSTATE AGREEMENT ON DETAINERS

Six copies. Signed copies must be sent to the inmate and to the official who has the inmate in custody. A copy should be sent to the Agreement Administrators of both the sending and the receiving states. Copies should be retained by the person filing the request and the judge who signs the request. Prior to transfer, the inmate may be afforded a judicial hearing similar to that provided under the Uniform Criminal Extradition Act, in which the inmate may bring a limited challenge to this request.

REQUEST FOR TEMPORARY CUSTODY

TO: _____
 Warden (Institution)

 (Address) (City/State)

Please be advised that _____, who is presently an inmate of
 (Inmate's Name & Number)
your institution, is under [indictment] [information] [complaint] in the _____
 (Jurisdiction)
of which I am the _____
 (Title of Prosecuting Officer)

Said inmate is therein charged with the following offense(s): _____

In order that proceedings in this matter may be properly had, I hereby request temporary custody of such person pursuant to Article IV(a) of the Interstate Agreement on Detainers (IAD).

I propose to bring this person to trial on the above [indictment] [information] [complaint] within the time specified in Article IV(c) of the IAD.

- Attached herewith find a certified copy of :
- A. The complaint, information or indictment.
 - B. The warrant.
 - C. Fingerprint cards, photographs, and physical description (if available).

I hereby agree that immediately after trial is completed in this jurisdiction I will return the prisoner directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, the Notice of Disposition of a Detainer, immediately after trial and to return it to your state with the inmate.

Signature: _____ Dated: _____

(Printed Name & Title)

Address: _____

City/State: _____ Telephone: _____

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action in accordance with its terms and the provisions of the IAD.

Signature: _____
Judge

Dated: _____

_____, Judge
(Printed name)

Court/Judicial District: _____

City/State: _____

Telephone: _____