INTERSTATE AGREEMENT ON DETAINERS AND THE RIGHTS IT CREATED

INTRODUCTION

Prior to 1984, the Interstate Agreement on Detainers (IAD) generated very little concern. However, under a theory recently put forth by defense attorneys for accused serial killer Alton Coleman, the IAD could provide a mechanism which would interfere with the execution of the death penalty. This article will explore this issue in detail, but before doing so, a discussion of the workings of the IAD is appropriate in order to better appreciate the consequences of this theory.

This article will first explore the effects of the detainer process and the events which led to the development of the IAD. Second, it will discuss the application of the IAD’s procedural safeguards. Third, the ability of both the prisoners and the states to circumvent the IAD’s protection will be analyzed. Finally, this article will examine whether certain prisoners can avoid or delay execution of the death penalty through strict compliance with the IAD.

The detainer and its effects

A detainer is a warrant placed on a prisoner to insure that the prisoner, upon completion of the prison term, will be available to the prosecuting authority who filed the detainer. The filing of a detainer is an informal process which does not bind the requesting party to act. In fact, it is estimated that one-half of detainers filed are never acted upon by the requesting authority.

For example, a prisoner in the sending state may have charges pending in the demanding state. The demanding state does not want the prisoner released following completion of the prison term in the sending state. Accordingly, authorities in the demanding state will file a detainer with the warden of the prisoner in the sending state, notifying him of their intention to prosecute.

1 Alton Coleman was convicted on a federal kidnap charge in Dayton, Ohio, and was subsequently convicted of murder and sentenced to death in Cincinnati, Ohio.

2 Detainers are generally classified into three categories depending upon the reason the prisoner is wanted: (1) to answer outstanding charges; (2) to begin serving an imposed but unexecuted sentence; and (3) for violation of parole or probation. Dauber, Reforming the Detainer System: A Case Study, 7 CRIM. L. BULL. 669, 676 (1971) [hereinafter cited as Dauber]. The detainers discussed in this article are notifications that charges are pending against a prisoner in another jurisdiction.


5 The “sending state” is the state in which the person is first convicted and begins serving a term of imprisonment.

6 The “demanding state” is the state in which prosecuting authorities seek custody of a prisoner of another state for trial on outstanding charges.
The detainer process may appear insignificant, but upon further examination it becomes clear that a detainer often becomes a stumbling block for the prisoner. As illustrated previously, the detainer represents the threat of further prosecution. The possibility of further prosecution produces a threat of additional criminal sanctions at the end of an inmate’s prison term. With this in mind, prison authorities often assume that a prisoner against whom a detainer is filed poses a greater risk for escape. Accordingly, penal authorities often assign a high security classification to inmates with detainers. As a high security risk, an inmate loses privileges such as: preferred living quarters; “trust” status; residence at “honor farms”; and participation in furlough programs. Additionally, parole boards often take into account outstanding detainers when considering a prisoner’s parole status.

Prosecutorial delay in following up on a detainer also impinges on the judiciary’s sentencing power. If the prosecutor delays long enough the court may be prevented from imposing concurrent sentences. Prosecutors may also cause an increased burden on an inmate by filing a detainer with no real intention of pursuing prosecution. For example, it is not uncommon for a detainer to be withdrawn just prior to the prisoner’s release.

Perhaps the most significant effect of a detainer is its psychological effect on inmates. There is often severe anxiety caused by serving a sentence with the uncertainty of being taken into custody by another state at the conclusion of the prison term. This anxiety interferes with the prisoner’s ability to max-

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9Yackle, supra note 3 at 88.
10Dauber, supra note 2 at 692.
11Id. at 692; see also, e.g., United States v. Candelaria, 131 F. Supp. 797, 799 (S.D.Cal. 1955) (detainee denied trust status, outside work, good inside work assignments); United States v. Maroney, 194 F. Supp. 154, 156 (W.D.Pa. 1961); The Detainer supra note 8 at 1192.
12Yackle, supra note 3 at 91; see also, The Detainer, supra note 8 at 1192.
14Yackle, supra note 3 at 93.
15Id.
16Bennett, supra note 13 at 21.
17Yackle, supra note 3 at 92.
18Id.
imize his institutional opportunities. The anxiety may also leave an inmate with little inclination towards self-improvement. Thus, a detainer decreases the effectiveness of rehabilitation programs by affecting the prisoner's attitude and by also obstructing the correctional authorities’ ability to implement long range rehabilitation programs.

Prior to 1969, the courts failed to recognize a prisoner's right to a speedy trial on those charges underlying detainers. In 1969, however, in *Smith v. Hooey*, the Supreme Court held that a prisoner has a right to a speedy trial. Thus, the state is under an obligation to make a diligent, good faith effort to bring a defendant to trial within a reasonable time. The same obligation exists when the defendant is serving a sentence in a federal prison outside the state involved. In the follow-up decision of *Dickey v. Florida*, the Supreme Court set aside a criminal conviction for robbery by the Florida state courts because the state failed to bring the defendant to trial for a period of over seven years, due to his detention in a federal penitentiary. Thus, *Hooey* and *Dickey* place an added burden on prosecuting authorities to timely dispose of detainers and the underlying charges.

**Development of the Interstate Agreement on Detainers**

In light of the difficulties associated with detainers, the federal government, the District of Columbia, and all but two states have enacted the Inter-
The Interstate Agreement on Detainers (IAD) as of 1984. The IAD originated in 1948, when a group known as the Joint Committee on Detainers issued a report concerning the problems arising from the use of detainers. The committee's report established guiding principles for use by prosecuting authorities, prison officials, and parole authorities. The committee met again in 1955 and 1956, under the auspices of the Council of State Governments, which resulted in the approval of a draft version of the IAD. In April, 1956, the proposal was reviewed and endorsed by a jointly sponsored conference and later included in Suggested State Legislation Programs for 1957.

In Article I, the drafters of the IAD recognize that detainers based on outstanding charges and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, the IAD created rights, previously non-existent, in


The full text of the Interstate Agreement on Detainers (IAD) may be found in the following: Council on State Governments, Suggested State Legislation: Program for 1957, 74-78 (1957). Hereinafter, the Interstate Agreement on Detainers will be cited as IAD.


The following guidelines later served as the underpinnings of the IAD: (1) Every effort should be made to accomplish the disposition of detainers as promptly as possible; (2) There should be assurance that any prisoner released to stand trial in another jurisdiction will be returned to the institution from which he was released; (3) Prison and Parole authorities should take prompt action to settle detainers which have been filed by them; (4) No prisoner should be penalized because of a detainer pending against him unless a thorough investigation of the detainer has been made and it has been found valid; (5) All jurisdictions should observe the principles of interstate comity in the settlement of detainers, and each bear its own burden of expenses and effort involved in disposing of the charges and detainers.” Bennett, supra note 13 at 22.

436 U.S. at 349.

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436 U.S. at 350.

Conversely, the Uniform Mandatory Disposition of Detainers Act governs criminal prosecution pending against an inmate in the same jurisdiction where he is confined. See Council of State Governments, Suggested State Legislation: Program for 1959 at 167 (1958). However, the IAD applies the same principles embodied in the intrastate field to the interstate field. Council of State Governments, Program for 1957 at 78-85 (1956).

The joint conference included representation by the American Correctional Association, Council of State Governments, the National Probation and Parole Association, and the New York Joint Legislative Committee on Interstate Cooperation. 436 U.S. at 350.

436 U.S. at 351.

IAD, Art. I.
an effort to implement the prisoner's right to a speedy trial and thus minimize interference with prisoner rehabilitation.\textsuperscript{35}

The disposition of charges outstanding in other jurisdictions only comes through the cooperation of the affected jurisdictions.\textsuperscript{36} Thus, Article I states that "proceedings with reference to such charges and detainers," when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of the agreement to provide such cooperative procedures."\textsuperscript{38} Therefore, the objective of the IAD is twofold. While providing a cooperative procedure for the speedy disposition of detainers, the IAD also minimizes interference with prison rehabilitation.

Article IX of the IAD states that the IAD "shall be liberally construed so as to effectuate its purposes."\textsuperscript{39} As stated above, the benefits of the IAD extend to both the member states and prisoners.\textsuperscript{40} However, the Supreme Court in\textit{Cuyler v. Adams}\textsuperscript{41} held that the legislative history of the IAD, including the Comments of the Council of State Governments and the Congressional Reports and debates preceding the adoption of the Agreement on behalf of the federal government, emphasizes that the primary purpose of the IAD is for the protection of prisoners.\textsuperscript{42} Nevertheless, the IAD avails a procedural mechanism for the early disposition of detainers to both the state and prisoner.

\textbf{IAD Procedure for Prisoner-Initiated Disposition of Detainers}

The thrust of the IAD is found in both Art. III and Art. IV. Article III provides a procedure whereby a prisoner against whom a detainer is outstanding can demand a speedy disposition of the charges which give rise to that detainer.\textsuperscript{43} Prison officials have an affirmative duty to promptly inform an inmate of any detainers lodged against him and their source.\textsuperscript{44} They must also ad-

\textsuperscript{35}United States\textit{ ex rel.} Esola\textit{ v. Groomes}, 520 F.2d 830, 883 (3d Cir. 1975).

\textsuperscript{36}Yackle, \textit{supra} note 3 at 96.

\textsuperscript{37}The IAD never explicitly defines "detainer" as it is used in the Agreement. However, the legislative history as enacted by the federal government provides: "The word 'detainer' as it is used in the Agreement is a notification filed with the institution in which a prisoner is serving a sentence, advising him that he is facing pending criminal charges in another jurisdiction." Senate Report 91-1356, 91st Cong., 2nd Sess., 3 U.S. Code Cong. & Admin. News p. 4865 (1970); 116 Cong. Rec. 38840 (1970).


\textsuperscript{39}IAD, Art. IX.

\textsuperscript{40}Congressman Poff, preceding IAD's enactment by the federal government, stated, "[t]he Agreement on detainers does not affect the applicable law in any criminal case. All it does is insure that both prosecution and defendant may, if they desire, obtain their day in court on a prompt and timely basis. The advantages to both sides are considerable." 116 Cong. Rec. 14000 (1970) (remarks by Rep. Poff).

\textsuperscript{41}449 U.S. 433 (1981).

\textsuperscript{42}449 U.S. at 449.

\textsuperscript{43}436 U.S. at 351; see IAD, Art. III.

\textsuperscript{44}IAD, Art. III(c).
vise the inmate of the right to request a final disposition of the underlying charges. If the prisoner does make such a request, the jurisdiction which filed the detainer must bring him to trial within 180 days. If the demanding jurisdiction fails to bring the prisoner to trial within the 180 day limit, the court in which the charge is pending shall enter an order dismissing the charges with prejudice. Thus Article III of the IAD works as a mechanism for the prisoner to ensure the constitutional guarantee of a speedy trial.

There are several considerations a prisoner should be aware of when faced with the opportunity to demand disposition of outstanding detainers. First, the demanding state, when faced with the decision to go forward with a detainer or dismiss it, may take the former course. A prisoner should assume that he will be brought to trial on the outstanding charges, and therefore he must consider the likelihood of being convicted. Further, the prisoner must consider whether any sentence imposed will run concurrently with his present sentence. The prisoner’s request also operates as a request for final disposition on all detainers in the demanding state and therefore, once he makes a request, he subjects himself to trial on every outstanding detainer pending in that state.

Perhaps most importantly, a prisoner’s request under Article III of the IAD operates as a waiver of extradition with respect to the charge pending in the demanding state. A prisoner proceeding under Article III also "waives his right to contest extradition to the demanding state after he is released from the state of incarceration." Moreover, the prisoner’s request under Art. III of the IAD is deemed consent to be taken to the demanding state for trial and to be returned after trial to the original place of confinement.

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45 Id.
46 436 U.S. at 351; IAD, Art. III(a). "For good cause shown in open court, with either the prisoner or his counsel present, the court having jurisdiction over the matter may grant any necessary or reasonable continuance." 436 U.S. at 351 n. 18. Id. The 180 day period for bringing accused to trial after accused makes a request under Art.III of the IAD starts to run on the date of receipt by the prosecuting authorities of such demand. Young v. Mabry, 471 F. Supp. 553, 560 (E.D.Ark. 1978), aff’d 596 F.2d 339 (1978), cert. denied 444 U.S. 853 (1978); see also State v. Mason, 90 N.J. Super. 464, 472-74, 218 A.2d 158, 162-164 (1966).
47 IAD, Art.V(c). Dismissal must be with prejudice: "[T]he constitutional guarantee is not to be washed away in the dirty water of the first prosecution, leaving the government free to begin anew with clean hands." Mann v. United States, 304 F.2d 394, 397 (D.C. Cir. 1962).
48 U.S. CONST. amend.VI. Whether adherence to the IAD also complies with the constitutional standards of a speedy trial is uncertain. Meyer, supra note 7 at 764.
49 Id.
50 Id.; see also Wexler & Hershey, Criminal Detainers in a Nutshell, 7 CRIM. L. BULL. 753, 758-759 (1971).
51 Id., Art.III(d).
52 Id.; see also Wexler & Hershey, Criminal Detainers in a Nutshell, 7 CRIM. L. BULL. 753, 758-759 (1971).
53 Id., Art.III(e). Ordinarily under the Uniform Extradition Act, a prisoner may waive his right to contest extradition "only in the presence of a judge after his rights have been explained." Meyer, supra note 7 at 665 n. 26.
54 IAD, Art.III(e). See Meyer, supra note 7 at 665.
The circumstances facing a prisoner after requesting disposition of outstanding detainers are not without benefit to the prisoner. In addition to implementing the prisoner's right to a speedy trial, Article III of the IAD contains a "trial before return" requirement. Article III(d) provides:

If trial is not had on any indictment, information, or complaint . . . 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. The following hypothetical formulated by one commentator is illustrative of this point. Assume that an Ohio prisoner is charged with separate offenses in counties A and B in Indiana. Prosecutors in both counties lodge detainers and the prisoner makes an Article III request for disposition of the county A charge. The prisoner's request is given to the warden who in turn forwards a copy to both prosecutors. When the prisoner is in Indiana to face trial in County A, the prosecutor of County B must also bring him to trial. If County B fails to try the prisoner before his return to Ohio, the County B charge must be dismissed with prejudice.

**IAD Procedure for State-Initiated Disposition of Detainers**

If a prisoner decides against requesting disposition of an outstanding detainer, he may still be brought to an early trial initiated by the prosecutor of the demanding state under Article IV of the IAD. Article IV permits a prosecutor to secure a prisoner's presence for disposition of the outstanding charge. Article IV also ensures that interruptions of the sending state's incarceration are minimized. A simplified procedure for obtaining a prisoner's presence is made available in exchange for the small added hardship of time limits.

After filing a detainer, a prosecutor can have a prisoner made available by presenting to the officials of the state of incarceration "a written request for temporary custody or availability." Article IV provides further that absent affirmative intervention by the governor during a 30 day waiting period, a request for temporary custody shall be honored by the state which maintains

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8See supra notes 46 and 47.
9IAD, Art.III(d).
10Meyer, supra note 7 at 666.
11436 U.S. at 353; IAD, Art.IV.
12United States ex rel. Esola v. Groomes, 520 F.2d 830, 834 (3d Cir. 1975).
13IAD, Art.IV(a). "When a prisoner is held in a federal institution, some requests are received in Washington and forwarded to the appropriate institution." Meyer, supra note 7 at 668 n. 43.
14When the prisoner is held in a federal institution, the Attorney General may intervene.
15The request for temporary custody must be approved, recorded and transmitted by the court having jurisdiction over the pending charge. IAD, Art.IV(a).
custody of the prisoner. Here again, if other prosecutors of the demanding state have filed detainers against an inmate, the prison authorities must notify them of the request made by the first prosecutor and the reason for it.

In the past a controversy arose as to whether a prisoner transferred for trial under Article IV of the AID loses his right to contest such transfer under the Uniform Criminal Extradition Act. As previously stated, a request by a prisoner under Article III of the IAD operates as a waiver of his right to contest extradition. However, Article IV of the IAD makes no mention of extradition. Applied "literally Article IV entitles the demanding state to temporary custody of the prisoner without the necessity of formal extradition" proceedings.

In Cuyler v. Adams, the Supreme Court resolved this much disputed issue. The Cuyler court held Article IV(d) of the IAD provides that a prisoner incarcerated in a jurisdiction which has adopted the Uniform Criminal Extradition Act is entitled to the procedural protections of that Act. Specifically, Cuyler held that a prisoner has a right to a pretransfer hearing when a transfer is requested under Article IV of the IAD. The Supreme Court reached its conclusion after examining the legislative history of the IAD contained in the comments on the draft agreement made by the Council of State Governments at its 1956 conference.

In discussing the degree of protection to which a prisoner is entitled under Article IV of the IAD the drafters stated: "Article IV(d) safeguards certain of the prisoner's rights . . . if he (prisoner) does not waive extradition, it is not appropriate to attempt to force him to give up the safeguards of the extradition process even if this could be done constitutionally." Thus, the Cuyler court concluded, "a prisoner transferred against his will under Article IV of the IAD


"IAD, Art.IV(d) provides: "Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph(a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery."

1449 U.S. at 446, 447.

"Id. at 446-448.

14Id. at 447.

14Id. at 447; Council of State Governments, Program for 1957 at 78-79 (1956).
should be entitled to whatever 'safeguards of the extradition process' he might otherwise have enjoyed.” Cuyler’s “safeguards include the procedural protections of the Extradition Act, in those states which have adopted it, as well as any other procedural protections the sending state guarantees.”

If a request for temporary custody under Article IV of the IAD is honored, the demanding state is still subject to certain limitations. Unlike the 180 day time limitation under an Article III prisoner-initiated transfer, Article IV provides the demanding state has only 120 days from a prisoner’s arrival in which to try him.” The only exceptions to this time limit are for good cause shown in open court with the defendant or his counsel present, or the prisoner’s inability to stand trial because of mental incompetency.

Article IV also contains a “trial before return” requirement. If the prisoner is not tried on all charges which underlie detainers in the demanding state prior to his return to the original jurisdiction, such charges shall be of no further force and the court should enter an order dismissing the same with prejudice. Violations of the “trial before return” requirement of Article IV(e) burden the effectiveness of rehabilitative treatment. Party states to the IAD give up exclusive custody of a prisoner in return for the right not to have its various rehabilitative programs hampered.

**Prejudice Requirement**

It remains uncertain whether a showing of prejudice is necessary before a

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449 U.S. at 448.

7 Id. In Commonwealth v. Carter, 478 A.2d 1286 (Pa. Super. 1984), the court held that a federal prisoner had no right to pretransfer hearing. The Carter court did not disagree with Cuyler; rather, it recognized that the prisoner-appellant was in the custody of the United States which is not a party to the Extradition Act. Thus, a federal prisoner is not entitled to those pre-existing rights conferred by the Extradition Act. Id. at 1294.

7 IAD, Art.IV(c). The prisoner against whom the detainer is lodged is also protected by the Speedy Trial Statutes. The IAD and the Speedy Trial Act, 18 U.S.C.A. §3161, deal essentially with the same subject matter. United States v. Odom, 674 F.2d 228, 231 (4th Cir. 1982), cert. denied, 457 U.S. 1125 (1982). Both contain statutory limitations on the time that may elapse before a defendant is brought to trial. Id. Both impose the sanction of dismissal when the limits are not met. Interpretation of the acts should rarely be discordant. Generally, delay that is lawful under the Speedy Trial Act will comply with the IAD. When a delay is granted under the Speedy Trial Act, a defendant may not assert that compliance with that act infringes on rights under the IAD, unless he raises an objection. Id. at 232. Upon such objection the court should “determine and record whether the good cause requirement” for continuance under article IV(c) and III(c) of the IAD are also satisfied. Id.

7 Id. See also Stroble v. Anderson, 587 F.2d 830, 838 (6th Cir. 1978) cert. denied, 440 U.S. 940 (1970) and United States v. Ford, 550 F.2d 732, 743 (2d Cir. 1976) aff’d sub nom. 436 U.S. 340 (1978). The Ford court emphasized “the importance of granting the defendant an opportunity to be heard before granting an extended criminal trial continuance.” Id. Without such a requirement, the right to a speedy trial under the Agreement would “be whittled away in the non-adversary context of ex parte communication between the government and the court.” Id.

7 IAD, Art.VI.

7 IAD, art.IV(e).

520 F.2d at 835.
dismissal will be ordered following a violation of either the time limitations or "trial before return" requirements of both Article III and IV. Recently, the Eighth Circuit in *Shigemura v. United States,* rejected a prisoner's claim that the state violated Article IV(e) of the IAD. The *Shigemura* court stated: "To prevail on his claim, appellant must prove that the statutory violation prejudiced him in some aspect of his state imprisonment or in defending against the federal claim." Similarly, the same circuit in *Young v. Mabry,* held that even if there had been a technical violation of the 180 day requirement of Article III, the petitioner had not been prejudiced by the delay, and thus would not be heard to complain of it in a collateral hearing. In his dissenting opinion in *United States v. Ford,* Second Circuit Judge Moore was unwilling to allow technical violations to operate to "thwart the jury's determination of guilt." 

However, nowhere in the IAD or its legislative history as enacted by the Federal government is there any evidence indicating that prejudice to the prisoner must occur from an IAD violation before an indictment may be dismissed. Further, the Sixth Circuit in *Stroble v. Anderson* implicitly held that prejudice need not be shown to entitle a prisoner to the benefits of the IAD. The court in *Stroble* found a violation of the IAD and thus reversed the district court which had found that the prisoner failed to make a showing of prejudice. The *Stroble* court stated that "the provision requiring the receiving state to try the prisoner sent by another state within 120 days, or return him, or dismiss the indictment, was a major feature of the agreement designed to make it enforceable." 

Recently, in *Brown v. Wolff* the Ninth Circuit relied on *United States v. Mauro* in finding no additional requirement of prejudice in the IAD nor in its

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61. IAD, Art.V(c).
62. IAD, Art.III(e), Art.IV(e).
63. supra note 27.
64. at 380 (8th Cir. 1984).
65. at 381.
67. at 344. In the alternative, the court in *Young* held the 180 day limit was not violated, as the period does not run until a prisoner's Art. III demand is received by the prosecuting authorities. See supra note 47.
69. Id. at 745 (Moore, J., dissenting); see also Note, Interstate Agreement on Detainers-Stroble v. Anderson, 587 F.2d 830 (6th Cir. 1978), 6 N. KEN. L. REV. 393, 396 (1979) [hereinafter cited as Stroble].
73. supra note 89 at 397. See supra note 89 at 397.
interpretation. In Maruo, the Supreme Court implicitly held there was no showing of prejudice necessary when it affirmed the Second Circuit’s decision in Ford v. United States. Ford held that Article V(c) of the IAD dictates that a dismissal is mandatory following a violation of the Agreement. To permit anything less than mandatory dismissals for violation of those provisions calling for the same would strip the IAD of its intended force and allow the government to avoid its responsibility.

**Waiver of IAD Protection**

Violation of the IAD is non-jurisdictional error, as a prisoner can waive protection under the IAD. The IAD amounts to nothing more than procedural rules which do not rise to the level of constitutional guarantees. As such, the rights created under the IAD may be waived by a prisoner against whom a detainer is outstanding. The Sixth Circuit in United States v. Eaddy found that despite its mandatory language, the IAD creates rights for the benefit of the prisoner, and thus such rights are waivable.

The Eaddy court concluded that where a prisoner is aware of and understands his rights under the IAD, the prisoner may waive those rights, provided such waiver is voluntary. Eaddy provided further that rights under the IAD may also be waived where there is an affirmative request by the prisoner to be treated in a manner contrary to IAD procedures. However, the Ninth Circuit in Brown v. Wolff held that, ordinarily, a waiver cannot be found from mere silence. “The IAD puts no affirmative obligation on the prisoner to alert the court of his rights under the IAD.”

706 F.2d at 906.

99 Article V(c) of the IAD provides: “... 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 in article III or article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.” (emphasis added).

550 F.2d at 743.

Stroble, supra note 89 at 399.


587 F.2d at 400. See also United States v. Black, 609 F.2d 1330, 1334 (9th Cir. 1979), cert. denied, 449 U.S. 847 (1979); Brown v. Wolff, 706 F.2d 902, 907 (9th Cir. 1983).

595 F.2d 341 (6th Cir. 1979).

Id. at 344.

Id.

706 F.2d 902, 907 (9th Cir. 1983).

Id.
Nonexclusivity of the IAD Procedure

The IAD lost some of its needed vitality following the Supreme Court decision in *United States v. Mauro*. In *Mauro* the court concluded that the IAD is not the exclusive means whereby federal prosecuting authorities can gain custody of a state prisoner for trial on a federal charge. More specifically, *Mauro* recognized that federal authorities may use a writ of habeas corpus *ad prosequendum* in order to gain custody of a prisoner in a state institution. The court concluded that such writ is not a "detainer" for purposes of triggering protection under the IAD. Thus, a federal prosecutor can avoid the procedural safeguards outlined in the IAD, simply by first seeking custody of a state prisoner by way of habeas corpus *ad prosequendum*.

The *Mauro* court reached its conclusion only after identifying major differences between a writ of habeas corpus *ad prosequendum* and a detainer. The writ is issued by a federal court pursuant to the express authority of a federal statute. Moreover, the writ is immediately executed, and thus enactment of the IAD was not necessary to achieve its expeditious disposition. Unlike a detainer, a writ of habeas corpus *ad prosequendum* used to obtain the presence of a state prisoner for trial, has run its course upon the prisoner's return to state custody and would no longer be operative. The Supreme Court stated, "[w]hen the United States obtains a prisoner by means of a writ of habeas corpus *ad prosequendum*, the problems that the Agreement (IAD) seeks to eliminate do not arise; accordingly, the Government is in no sense circumventing the Agreement by means fo the writ."

However, the *Mauro* court stated clearly that once the federal authorities lodge a detainer against a prisoner with state officials, any subsequent writ of habeas corpus *ad prosequendum*, issued by a federal district court, is deemed a "written request for temporary custody" within purview of Article IV of the

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110 Id. at 361.
111 "United States District Courts are authorized by 28 U.S.C. §2241(a) to grant writs of habeas corpus; expressly included within this authority is the power to issue such a writ when it is necessary to bring a prisoner into court to testify or for trial. 28 U.S.C. §2241(c)(5)." 436 U.S. at 357.
112 436 U.S. at 357.
113 Id. at 360-61. Prior to the Supreme Court's decision in *Mauro*, the circuits were not in agreement on whether filing a writ of habeas corpus *ad prosequendum* constituted a detainer under the IAD. The Sixth, First and Fifth Circuits held that it was not. See Ridgeway v. United States, 558 F.2d 357 (6th Cir. 1977) cert. denied, 436 U.S. 946 (1978); United States v. Kenaan, 557 F.2d 912 (1st Cir. 1977) cert. denied, 436 U.S. 943 (1978); United States v. Scallion, 548 F.2d 1168 (5th Cir. 1977) cert. denied, 436 U.S. 943 (1978). The Second and Third Circuits had held that filing the writ triggered the application of the IAD. See United States v. Sorrell, 562 F.2d 227 (3d Cir. 1977) cert. denied, 436 U.S. 949 (1978); United States v. Chico, 558 F.2d 1047 (2d Cir. 1977) cert. denied, 436 U.S. 947 (1978).
114 436 U.S. at 360.
115 Id.
116 Id. at 361, n.26.
117 Id. [footnotes deleted].
Accordingly, the issuing jurisdiction would be subject to the procedural safeguards established under the IAD.

Arguably, however, state prosecuting authorities may only obtain temporary custody of prisoners serving a term of imprisonment in another state or federal institution, by way of the IAD. In the pre-Mauro decision, Trigg v. Tennessee, the Sixth Circuit Court of Appeals ruled that the IAD has "replaced the other methods available to a state for obtaining temporary custody of a defendant." In reaching its conclusion, the Trigg court recognized that prior to the enactment of the IAD the primary means of obtaining custody of a prisoner was by way of habeas corpus. Another possible procedure for gaining custody of a federal prisoner was to make a request to the United States Attorney General pursuant to 18 U.S.C. §4085. However, it is not likely that the holding in Trigg will withstand the Supreme Court's findings in Mauro. Both state and federally issued writs of habeas corpus ad prosequendum operate similarly. Thus, neither would pose the dangers which the IAD was intended to protect.

Similarly, the use of extradition warrants do not create the hazards which the IAD was designed to prevent. In State ex rel. Bailey v. Shepard, the court found an extradition warrant to be unlike a detainer and similar to a federal writ of habeas corpus ad prosequendum. The extradition warrant is a demand for immediate custody of prisoner to stand trial, and creates no dangers at which the IAD is aimed. The court in Bailey concluded that the IAD does not prevent the use of traditional extradition procedure; at least where no detainer had been previously lodged.

Therefore, the actual effectiveness of IAD may be slightly diminished due to the prosecuting authorities' ability to gain custody of a prisoner through habeas corpus ad prosequendum or extradition.

Service of Multiple Sentences

Having discussed the purpose and workings of the IAD, the parameters of

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11436 U.S. at 362. Once a detainer has been lodged the federal government precipitated the very problems with which the IAD is concerned. Id. The policies underlying the IAD are fully implicated, and thus there is no reason to give the term "written request for temporary custody" an unduly restrictive meaning. Id.


116Id. at 952 n.4.

117Id.

118Id. 18 U.S.C. §4085 provides for the transfer of a federal prisoner to state custody for trial on felony charges, if and only if, the Attorney General finds such transfer in the public interest. "This method is not frequently agreed to by the United States." 393 U.S. at 381.

119584 F.2d 858 (8th Cir. 1978).

120Id. at 862.

121Id.

122Id.
the IAD's reach can be more thoroughly explored. As mentioned at the onset of this article, legal advocates recently set forth a theory under which the IAD may have created a prisoner right which has shocking consequences.

Under this theory the IAD gives a prisoner the right to serve his entire sentence imposed by the sending state prior to the execution of a second sentence in a demanding state. The impact of this theory is felt most when a prisoner serving a term of imprisonment in one state is subsequently sentenced to death in a demanding jurisdiction. Again, a hypothetical is illustrative of this point. A prisoner is sentenced to a term of imprisonment or a life sentence on a federal charge. Ohio prosecuting authorities, having filed a detainer, request temporary custody of the federal prisoner under Article IV of the IAD, for trial on an outstanding state murder charge. The prisoner is found guilty on the state murder charge and sentenced to death. Obviously, returning the prisoner to federal custody for the completion of a life sentence would deny the Ohio authorities the opportunity of imposing the death penalty.

At common law, the sequence in which a prisoner served multiple sentences was a matter of comity between the affected jurisdictions. In the early decision, Ponzi v. Fessendan, the Supreme Court held that a federal prisoner, with the consent of the Attorney General, could be transferred to state custody for trial on a state charge. The Ponzi court stressed that one accused of a crime should not be permitted to use one sovereignty to obstruct the trial by another, and thus the defendant could not challenge a sovereign's waiver of its right to exclusive custody.

Five years after the Supreme Court's decision in Ponzi, in Kelley v. State the same court held that "[a] prisoner may certainly be tried, convicted and sentenced for another crime, committed either prior to or during his im-

18 Ohio's legislators may have anticipated this very problem. Included in Article VI(b) of the IAD, as enacted by Ohio, is the following: "No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill, or who is under sentence of death." OHIO REV. CODE ANN. §2963.30 (Page 1982) [emphasis added]. However, the Supreme Court concluded the IAD became federal law when Congress gave its consent to the states to enter into the cooperative agreement. Cuyler, 449 U.S. at 438. The Fourth Circuit Court of Appeals provided further that federal law encompasses the nine hundred articles I-IX (18 U.S.C.Appx.), of the Agreement as originally proposed by the Council of State Governments for the adoption by party states. Bush v. Muncy, 659 F.2d 402, 411 (4th Cir. 1981) cert. denied, 455 U.S. 910 (1982). Accordingly, under the Supremacy Clause "no party state has the power . . . to alter in any substantial way, any of its provisions governing the intended operations of the IAD." Id. Whether Ohio's particular enactment has that prohibited effect is in itself a federal question. Id.
21 258 U.S. at 260. The Ponzi court also stated that the chief rule is that the court which first takes control of a subject matter of litigation must be permitted to exhaust its remedy before other courts should gain custody. Id.
prisonment . . .” The *Kelley* court maintained that a prisoner has no constitutional right to serve out an unexpired sentence and accordingly a prisoner may be subject to capital punishment, executed during an unexpired prison term.\(^{134}\) The Supreme Court concluded, “[t]he penitentiary is no sanctuary, and life in it does not confer immunity from capital punishment . . . .”\(^{135}\) Therefore, at common law, where a prisoner was faced with multiple sentences, only the state which imposed the first sentence could demand satisfaction of the same.\(^{136}\) The prisoner, himself, simply had no standing to make such a demand.\(^{137}\)

Similarly, in United States *ex rel. Buchalter v. Warden of Sing Sing Prison*,\(^{138}\) Learned Hand, writing on behalf of the Second Circuit, found the issue to be whether the defendant’s interest in serving his prison term was of the “magnitude of a right worthy of recognition by the law.”\(^{139}\) The court ultimately held that “imprisonment is punishment exacted by the state; it gives the convict no asylum, temporary or permanent, against the prosecution or punishment for other crimes.”\(^{140}\) If a defendant was put to death prior to the completion of a prison term, the court held that no wrong would be committed as to the prisoner. Conversely, if execution prior to the completion of a prison term was a wrong to the state, the court held, the prisoner can not vicariously assert the state’s rights.\(^{141}\)

Following enactment of the IAD, virtually no court has applied the IAD to the above scenario. Although there was very little Congressional debate preceding the federal government’s enactment of the IAD, the discussion that did occur indicates that the prisoner must be returned. Representative Kastenmeir asserted: “Upon completion of the trial (in the demanding state) the prisoner would be returned to the institution in which he was imprisoned. If convicted, any sentence imposed would be served in the second jurisdiction following completion of the original sentence.”\(^{142}\)

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\(^{133}\) *Id.* at 593.

\(^{134}\) *Id.* See also Chapman v. Scott, 10 F.2d 690 (2nd Cir. 1926), where the Second Circuit held that a prisoner has no right to demand which of the two sentences are served first. *Id.* at 691.

\(^{135}\) 273 U.S. at 593. However, in *Kelley*, both sentences were imposed by the same jurisdiction, the second of which was imposed after the defendant prisoner’s escape. *Id.*

\(^{136}\) See *Ex parte Rockwell*, 75 F. Supp. 702 (M.D.Pa. 1948). “The sovereign having the prior and exclusive jurisdiction and custody of a prisoner may voluntarily surrender him to the other sovereign for the purpose of trial and sentence . . . . The matter of waiver . . . . is not subject to his [the prisoner’s] control; it addresses itself solely to the discretion of the sovereign.” *Id.* at 703.

\(^{137}\) See United States v. Murphy, 217 F.2d 247 (1954). “A prisoner has no standing to choose between two sovereignties each desiring his custody.” *Id.*

\(^{138}\) Buchalter v. Sing Sing, 141 F.2d 259 (2d Cir. 1944), cert. denied, 321 U.S. 780 (1944).

\(^{139}\) 141 F.2d at 259.

\(^{140}\) *Id.* at 259-60.

\(^{141}\) 141 F.2d at 260.

Applied literally, the IAD provides for the return of the prisoner to the sending state. Article V(d) states: "The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution of the charge or charges." The IAD provides further, "At the earliest practicable time consonant with the purpose of this agreement, the prisoner shall be returned to the sending State." This language indicates that the drafters of the IAD intended for the prisoner to be returned to the sending state in order to serve the remainder of the original sentence.

One must not forget, however, that a central aim of the IAD is to prevent interference with rehabilitation programs. Congressman Poff, speaking of the need for rehabilitation programs, stated that "the basic purpose of the entire penal system is to prepare its inmates to reenter society as law-abiding citizens." An inmate faced with the death penalty will never reenter society and thus there is little incentive for rehabilitation. In this light, returning a prisoner who faces the death penalty to the sending state for the completion of an unexpired prison term would not be "consonant with the purpose" of the IAD. This is not to say, however, that all inmates facing the death penalty will never benefit from rehabilitation programs. To the extent rehabilitation enables a prisoner to better cope among the prison population, the value of a rehabilitation program to those sentenced to death is not entirely lost.

A similar conflict exists when a prisoner is sentenced to a term of life imprisonment in both the sending and demanding states. Notwithstanding an early release, return to the sending state will prevent the prisoner from serving any time on the sentence imposed by the demanding state. However, the prisoner may have several justifications for desiring return to the original jurisdiction; the most important of which may be to resume participation in rehabilitative programs.

Another question remaining unanswered is whether the "right to return," under Article V(d) and (e) of the IAD, is intended to be a personal right of the prisoner. Insofar as the "right to return" is a right of the party states and not the prisoner's, the prisoner would be without standing to demand compliance with the IAD procedure. As stated previously, however, the IAD was enacted for both the benefit of the prisoner and the party states. Further, in Cuyler the Supreme Court made clear that the thrust of the Agreement was to benefit the prisoner. Accordingly, it appears that the rights created by the IAD are

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143IAD, Art. V(d).
144IAD, Art. V(e).
145See supra notes 33-35.
147See supra note 144.
148See supra note 40.
149See supra note 41.
personal to the prisoner.

A prisoner may have standing to claim relief as a third party beneficiary to the agreement between the party states. Assuming the IAD created contractual obligations in the party states, \textsuperscript{150} established law provides that a contract creates a duty in the promisor to any intended beneficiary, and thus the intended beneficiary may enforce that contract. \textsuperscript{151} This theory would be moot if in fact the "return provision" of the IAD is intended to benefit only the party states; as incidental beneficiaries also have no standing to bring an action for breach of contract. \textsuperscript{152} The IAD, however, is intended to benefit the prisoner by minimizing interference with rehabilitative programs. \textsuperscript{153} Therefore, as a donee third party beneficiary\textsuperscript{154} a prisoner would have a cause of action against both the demanding and sending state\textsuperscript{155} for the enforcement of Article V(d) and V(e) of the IAD which provide for the prompt return of a prisoner upon completion of prosecution in the second jurisdiction.

Thus, it remains uncertain whether the IAD affords a prisoner the right to be returned to the sending state in order to serve the remainder of the first sentence prior to the execution of the second sentence. What is certain, however, is that the drafters of the IAD intended the IAD to benefit both the party states and the prisoner. And thus, it would make little sense to grant the party states the right to demand the prisoner's return, while denying the prisoners themselves the same right.

**CONCLUSION**

The IAD successfully prevents the dangers previously associated with the detainer system. It aids a prisoner in what might be a diligent effort to achieve full rehabilitation. Similarly, prison authorities can implement rehabilitative programs without repeated interruptions. In a like manner, the IAD provides member jurisdictions with an orderly procedure which affords prisoners a speedy trial on outstanding charges. With emphasis placed on preparing prisoners for their reentry into society, courts should apply the IAD procedural safeguards with the force and effect which its drafters intended. However, the vitality of the IAD has already been drained, as prosecuting authorities may avoid the IAD procedures through alternative means available for obtaining custody of a prisoner for trial.

\textsuperscript{150}See Hampton v. Homesburg Prison Officials, 546 F.2d 1077, 1082 (3d Cir. 1976).

\textsuperscript{151}RESTATEMENT SECOND OF CONTRACTS §304.

\textsuperscript{152}In Pajewski v. Perry, 363 A.2d 429 (Del.Super. 1976), the court found that welfare recipients were merely incidental beneficiaries to a federal-state agreement created by statute, and as such had no standing to sue on the agreement. \textit{id.} at 432.

\textsuperscript{153}See supra note 30-31.

\textsuperscript{154}A beneficiary is considered a "donee" when the circumstances indicate that the promise intends to give the beneficiary the benefit of the promised performance. RESTATEMENT SECOND OF CONTRACTS §302(1)(b).

\textsuperscript{155}In Blair v. Anderson, 325 A.2d 94 (Del.Super. 1974), the court held that a state which enters into a contract waives the defense sovereign immunity when the plaintiff is a beneficiary to the agreement. \textit{id.} at 97.
The extent of protection which the IAD affords prisoners may be far greater than its common law counter-parts. To the outside world, the order in which a prisoner serves multiple sentences is probably of little significance. However, the prisoner enclosed within the concrete walls of a penitentiary has a vital stake in such a policy. Like all legislation, the IAD should be applied in light of its intended purpose. In most instances allowing a prisoner to demand return to the sending state will further the purpose of minimizing interference with rehabilitation programs. However, allowing a prisoner faced with the death penalty to demand his return to the sending state may stretch the protection of the IAD farther than its drafters intended. We must now wait for a judicial determination of the exact parameters to which the IAD extends.¹⁵⁶

WILLIAM A. MEADOWS