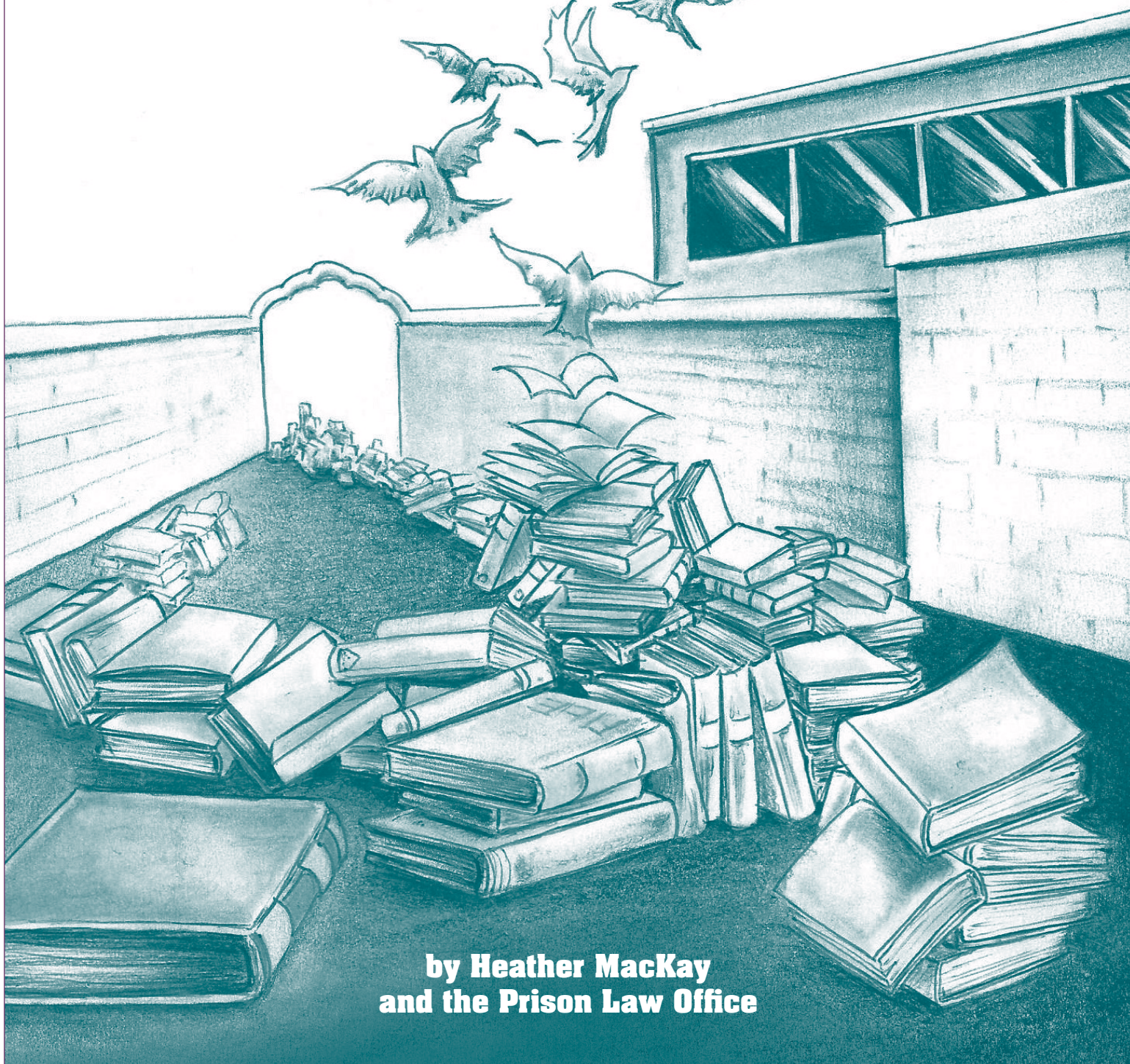


The California Prison and Parole Law Handbook



**by Heather MacKay
and the Prison Law Office**

THE CALIFORNIA PRISON & PAROLE LAW HANDBOOK

**BY HEATHER MACKAY
&
THE PRISON LAW OFFICE**

ISBN: 978-0-692-95526-0

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YOUR RESPONSIBILITY WHEN USING THIS HANDBOOK

When we wrote *The California Prison and Parole Law Handbook*, we did our best to provide useful and accurate information because we know that people in prison and on parole often have difficulty obtaining legal information and we cannot provide specific advice to everyone who requests it. However, the laws are complex change frequently, and can be subject to differing interpretations. Although we hope to publish periodic supplements updating the materials in the Handbook, we do not always have the resources to make changes to this material every time the law changes. If you use the Handbook, it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in a prison law library or in a public county law library.

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10.1 Introduction

A person incarcerated in California may have unresolved charges from a county within California or from the federal government or another state.¹ The charges might be for a criminal case, a traffic violation, or a probation or parole violation. In such cases, a prosecutor or law enforcement agency may place a “detainer” (sometimes called a “hold”) on the person. A detainer is an order that requires CDCR or jail officials to give notice of a person’s release date so the prosecutor or law enforcement agency will have an opportunity to take custody of the person and prosecute the charges.

A person in prison who does not do anything to resolve a detainer is likely to face prosecution on the detainer and face more time in custody at the end of the current prison term. In most cases, a person will want to take any available steps to resolve a detainer as soon as possible. Resolving a detainer may give a person an opportunity to serve any new term concurrently (at the same time) with the existing prison sentences or to get a one-third length consecutive sentence tacked on to the current term. Resolving any outstanding charges may also make it more likely that a person will be able to get into rehabilitative programs or be housed in lower security. Finally, resolving outstanding charges may help a person better plan for life after release by reducing the uncertainty about whether they will face further incarceration.

The final portions of the chapter provide an overview of the procedures for extraditing (forcibly transferring) a person in a California prison at the end of a California prison term to face charges in an out-of-state or federal case and the laws for involuntary transfers to other states to complete unfinished probation or parole terms.

OVERVIEW OF DETAINERS AND THEIR IMPACT

10.2 Definition of a Detainer

A detainer or “hold” is placed on a person in prison who is wanted by some government authority for another criminal charge, an unserved sentence, or a parole or probation violation charge. Law enforcement officers and prosecutors file detainers with prison authorities asking to be notified

¹ A person may face criminal charges for new offenses committed in prison; considerations concerning such charges are discussed in § 5.6. Immigration (ICE) detainers are discussed in Chapter 13.

before the person's release so they will have an opportunity to take custody of the person. Detainers can be based on many different types of charges and may be based on warrants that are years or even decades old.

There is no special format for a detainer. It may be a letter or a form, and it may or may not include a copy of an official charging document.

10.3 What to Do If No Detainer Has Been Filed

Even if no detainer has been filed, a person may believe that they are wanted for a criminal charge or a probation or parole violation by a California county, another state, or the federal government. The person should consider the available options and the pros and cons of taking action to try to resolve the matter. People who are unsure about what to do should try to talk with a lawyer who can help explain the situation and assist with communication with the prosecutor or law enforcement agency. The public defender's office in the jurisdiction where the offense was committed may be able to provide advice or assistance, including finding out whether any criminal charges actually have been filed.

People in prison may also ask CDCR staff to run a warrant check to see if there are any outstanding charges. However, people should be aware that the CDCR may contact a law enforcement agency or prosecutor if the prison staff believes there may be a possible outstanding case but the CDCR has not received a detainer.²

If no charges have been filed, it is usually in a person's best interest not to do anything. Asking CDCR staff to look into the matter or contacting law enforcement or the prosecutor may provoke action on an unknown or neglected case. On the other hand, some people may think that the authorities eventually will prosecute them and want to speed up the inevitable.

In some cases, a criminal charge will have been filed, but either a detainer has not been issued or it has not been sent to the prison officials. A person may want to ignore such charges in the hope that the prosecutor will lose interest and drop the case or that the prosecutor's evidence or witnesses will become unavailable. However, if a person wants to go ahead and try to resolve the charges, the steps to be taken will depend on where the charges were filed:

- ◆ For a California criminal charge, a person in prison may demand a trial or sentencing under Penal Code § 1381 even if no detainer has been filed (see §§ 10.14-10.15).
- ◆ For a California probation violation charge, a person can request disposition under either Penal Code § 1203.2a or Penal Code § 1381 even if there is no detainer (§ 10.16).
- ◆ For federal or out-of-state criminal charges, the Interstate Agreement on Detainers (IAD) process for requesting disposition cannot be used unless a detainer has been filed (§§ 10.18-10.19). However, a person can send a demand for a speedy trial to the prosecutor for the charging jurisdiction based on the federal constitutional right to a speedy trial or to due process (§§ 10.9-10.10). A person could also ask the prosecutor to file a detainer so that the person can demand a speedy trial pursuant to the IAD (§ 10.19) or ask for a

² DOM § 72040.5.5.

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“*Stoliker*” transfer to serve an out-of-state or federal term at the same time as the California term (§ 10.29).

- ◆ For federal or out-of-state probation or parole violation proceedings, the lack of a detainer does not affect the options, which are discussed in §§ 10.30-10.31.

10.4 Notification of a Detainer

After a law enforcement or prosecuting agency notifies the CDCR that there is a charge pending against a person, the prison case records office should promptly notify the person about the detainer and any options available for resolving it.³ The notification will be on a CDCR Form 661 Inmate Notification and Agency Acknowledgment of Detainer Receipt (included as Appendix 10-A). The records office will usually attach a copy of the detainer.

The Form 661 will show the date the detainer was filed, the charge on which it is based, and the name of the agency that filed it. The case records staff should check the appropriate box indicating what speedy trial procedures may apply.

Sometimes CDCR records officers make mistakes on the Form 661, including misidentifying the type of detainer or how it can be resolved. People should try to double-check this information. Small differences – such as whether the detainer is based on a probation violation or a new criminal charge – can affect a person’s rights.

In many cases, the Form 661 is issued while a person is in the reception center. In such cases, the CDCR staff may refuse to provide the forms for resolving a detainer, telling the person to wait until they are transferred to a programming prison before requesting disposition of the detainer.⁴ This practice is because the CDCR staff are especially busy at the reception centers and may not want to deal with extra paperwork or keeping track of people who request disposition and then are transferred. However, the laws that give people the right to request disposition of outstanding charges do not bar people in reception centers from requesting disposition. Furthermore, it can be in a person’s best interests to request a disposition as soon as possible because any concurrent sentence may not start running until the sentence actually is imposed. Thus, if CDCR staff refuses to process a request for disposition, a person should consider filing an administrative appeal (see Chapter 1). If the appeal is unsuccessful, a person could consider filing a petition for writ of habeas corpus in state court (see Chapter 15).

10.5 How a Detainer Can Affect a Person in Prison

California officials have the authority to decide how a detainer affects a person’s classification and custody level, even if the detainer is from the federal government or another state.⁵

Having a detainer on file can impact housing and eligibility for prison programs. The CDCR does not add points to a classification score for detainees, but detainees are noted as an administrative

³ 15 CCR § 3370.5(a); DOM § 72040.5.

⁴ DOM § 72040.5.2.1; DOM § 72040.6.1.

⁵ *Nelson v. George* (1970) 399 U.S. 224, 229-230 [90 S.Ct. 1963; 26 L.Ed.2d 578].

determinant that can affect classification matters.⁶ A person with a detainer that is likely to result in a significant additional period of incarceration or in deportation cannot be placed at a Level I (minimum security) facility without perimeter gun towers.⁷ Any detainer will make a person ineligible for the Alternative Custody Program.⁸ In addition, having a detainer may be a factor in whether not a person will be able to get into other types of rehabilitative programs.

10.6 Deciding What To Do After Notification of a Detainer

A person who has a detainer should determine whether there are ways to resolve the charge before the end of the current prison term. Many of the possible options are listed on the CDCR Form 661. These options are discussed in the following sections.

Even if it is possible to resolve a pending charge, a person first should decide whether resolving the charge is a good idea. Factors to be considered include the detainer's effect on classification and programming, uncertainty regarding the future, whether passage of time may result in prosecution or defense witnesses becoming unavailable or cause the prosecutor to lose interest in the case, and the possibility that statutory time limits for bringing the case to trial will expire.

One of the most important reasons for resolving a detainer as soon as possible is that the person might end up serving a longer total time in prison if the new charge is not resolved until the end of the current prison term. If the judge decides to run any new term concurrently (at the same time) with the present sentence, the sooner the time on the new sentence begins to run, the sooner the person will be released.⁹ If the judge decides to run the terms consecutive to the present sentence, then usually the "subordinate" terms will have to be set at one-third the length of the mid-term sentence.¹⁰

People with detainers from more than one jurisdiction should be aware that even if there is a way to demand resolution of all of the cases, there is no requirement that all of the proceedings happen at once. A person who is in custody in one jurisdiction for prosecution of a case has no right to demand that the prosecutor in another jurisdiction take action before the first case is resolved.¹¹

Given the many factors that need to be considered, it is difficult to predict the best course of action, and a person should try to seek advice from a lawyer. However, most people will want to clear their records of detainers as soon as possible.

10.7 Negotiating Resolution of the Charges

It may be possible to negotiate with the prosecutor or other officials where the criminal charge is pending to try to convince them to drop or reduce the charge. Negotiation should be conducted

⁶ 15 CCR § 3375.2(b)(13) ("HOL" is the classification acronym for detainers).

⁷ 15 CCR § 3375.2(a)(4).

⁸ 15 CCR § 3078.3(a)(6).

⁹ Penal Code § 669.

¹⁰ Penal Code § 1170.1; see examples of exceptions in Penal Code § 667.6(c)-(d); Penal Code § 1170.1(b)-(c); Penal Code § 1170.13; Penal Code §§ 1170.15-1170.16.

¹¹ *Ng. v Superior Court* (1992) 4 Cal.4th 29, 36-40 [13 Cal.Rptr.2d 856].

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only through a lawyer, after consideration of the potential risks and the likelihood of obtaining a favorable agreement. A person who wants to try to negotiate a disposition should contact the public defender's office for the jurisdiction where the charges are pending or should hire a criminal defense attorney.

There are many factors to consider in evaluating whether negotiation for dismissal has any chance of succeeding. Considerations include the seriousness of the outstanding charges, the nature of the current conviction and length of the sentence, the prior criminal record and in-prison behavior, and whether the prosecutor has violated any of the person's rights by failing to respond to speedy trial requests.

In response to a request for negotiation, the prosecutor could: dismiss the charges, state that the charges will be pursued, express a noncommittal reaction (such as, "I do not know what our office will do"), or ignore the communication entirely.

If the prosecutor says that the charges will be pursued, a person usually will then want to request disposition of the charges in the hope that the prosecutor will not be able to meet any time limits triggered by a demand for trial (as described in §§ 10.14-10.16, 10.23) or, if the case is prosecuted, that any new sentence runs concurrent with the current prison term.

10.8 What Happens When There Are Unresolved Detainers on the Release Date

If a person incarcerated in California still has a detainer when their release date is approaching prison staff will notify the charging authorities of the impending release. The notification is supposed to occur no later than 60 days before the release date for an out-of-state agency and no later than 10 days before the release date for an in-state agency.¹² If the agency that placed the detainer responds that the warrant has been recalled, the CDCR staff will ask the prosecutor to issue a "hold release" so that the detainer can be removed. If the hold is not released, then at the end of the California term, the person will be turned over to either the authorities from the charging jurisdiction or the sheriff for the county where the person has been in prison. Whether a person is turned over to the charging authorities or to the local sheriff depends on the type of detainer and on whether the charging authorities are able to take immediate physical custody.

If the detainer is based on a California criminal or probation violation case, the person can be taken into custody by the county authorities where the proceedings are pending. No formal court action is necessary. The CDCR may transfer the person to the demanding agency five calendar days before the scheduled release date (or five court days if the agency is more than 400 miles from the prison), so long as the agency agrees to keep the person in custody until the CDCR release date.¹³ Alternatively, the CDCR may keep a person in custody up to five calendar days (or five court days if the agency is more than 400 miles from the prison) *after* the scheduled release date to facilitate pickup by the demanding agency.¹⁴ However, if the demanding agency fails to take custody within this time

¹² 15 CCR § 3370.5(f); see also DOM § 72040.7 (directing staff to send such notices 90 days before release date). Penal Code § 4755(a).

¹³ Penal Code § 4755(b). The person should receive custody credits toward any new term for these extra days in custody. *People v. Lathrop* (1993) 13 Cal.App.4th 1401 [16 Cal.Rptr.2d 830].

¹⁴ Penal Code § 4755(b).

frame, then the CDCR must release the person. If a person is released to the streets, the detainer becomes void and the person cannot be arrested on the charges unless a court issues a new arrest warrant.¹⁵

If the detainer is based on federal criminal proceedings or an unserved federal sentence, the person may be turned over directly to the custody of the U.S. Marshal. No formal extradition procedures are required, since the federal government's authority extends to the entire country.

A person with a detainer for an out-of-state criminal case generally cannot be transferred to the other state unless there are formal extradition proceedings or the person waives the right to such proceedings. The local sheriff will usually take custody of a person facing out-of-state criminal charges while the extradition proceedings are being conducted. (Extradition is discussed in § 10.32-§ 10.37.) People should note that if the detainer is based on an unserved criminal sentence imposed after a request for trial under the IAD, the request for trial constituted a waiver of extradition (see § 10.21).

If a person has detainers from multiple agencies, the CDCR will give custody priority to either the agency that placed the first detainer or an agency that has issued a detainer for a previously-imposed but unserved prison term.¹⁶

CONSTITUTIONAL SPEEDY TRIAL AND DUE PROCESS RIGHTS

10.9 Federal Constitutional Speedy Trial Right

Every person facing formal criminal charges has a right to a speedy trial under the U.S. Constitution's Sixth and Fourteenth Amendments. This constitutional right applies to people already serving a sentence.¹⁷ The goal of the right is to protect defendants from delays in prosecution in order to prevent undue pre-trial incarceration, minimize anxiety over accusations, and limit the likelihood that a long delay will impair the ability to present a defense.¹⁸

Sixth Amendment speedy trial protections apply only to an "accused," meaning a person subject to a formal indictment or information or arrested and held to answer.¹⁹ In California felony cases, the Sixth Amendment speedy trial right does not apply until after the preliminary hearing is held and an information is filed, or after an indictment is filed.²⁰ In California misdemeanor cases, the Sixth Amendment speedy trial right applies starting when the person is arrested (if arrest results in actual restraint on liberty) or when the misdemeanor complaint is filed, whichever happens first.²¹ The point at which a person becomes "accused" of charges in the federal system or another state will depend on the policies and laws of the other jurisdiction. However, a person who is only subject to a detainer,

¹⁵ Penal Code § 4755(b).

¹⁶ 15 CCR § 3370.5(g).

¹⁷ *Smith v. Hooey* (1969) 393 U.S. 374, 378-382 [89 S.Ct. 575; 21 L.Ed.2d 607]; *In re Mugica* (1968) 69 Cal.2d 516, 523-524 [72 Cal.Rptr. 645].

¹⁸ *Smith v. Hooey* (1969) 393 U.S. 374, 377-378 [89 S.Ct. 575; 21 L.Ed.2d 607].

¹⁹ *United States v. Marion* (1971) 404 U.S. 307, 320 [92 S.Ct. 455; 30 L.Ed.2d 468].

²⁰ *People v. Martinez* (2000) 22 Cal.4th 750, 754-755 [94 Cal.Rptr. 381].

²¹ *Serna v. Superior Court* (1985) 40 Cal.4th 239, 262 [219 Cal.Rptr. 420]; *People v. Williams* (2012) 207 Cal.App.4th Supp. 1, 7-8 [144 Cal.Rptr.3d 360].

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but has not been formally held to answer on the allegation, is probably not protected by the Sixth Amendment right to a speedy trial.

The Sixth Amendment speedy trial right does not protect people from excessive delays between conviction and sentencing; post-conviction delay is protected only by the Fourteenth Amendment right to due process (see § 10.10).²²

For an “accused” person, the Sixth Amendment applies regardless of whether there is other applicable state or federal law establishing specific speedy trial procedures, timelines or remedies.

There is a four-part balancing test for deciding whether a defendant’s Sixth Amendment right to a speedy trial has been violated. The factors to be weighed are:

- ◆ The length of the delay. Excessive delays are presumed to be prejudicial to a defendant because they can affect the reliability of a trial in ways that are difficult to know. The state has the burden of refuting the presumption by proving that an extreme delay has not caused any prejudice to the defendant.
- ◆ The reason for the delay. Any deliberate delay or delay due to the state’s negligence will weigh against the state.
- ◆ Whether the defendant asserted or failed to assert the right to a speedy trial. It will be especially hard to convince a court that the case should be dismissed if there has not been a prior demand for trial. However, once a speedy trial demand is received, the officials have a “constitutional duty to make a diligent, good-faith effort” to bring the person to trial.²³
- ◆ Whether the delay caused any actual prejudice to the defendant.²⁴

The remedy for a violation of the Sixth Amendment right to a speedy trial is dismissal of the case, which cannot be re-filed.²⁵

10.10 Federal Constitutional Due Process Right

Although delays prior to formal charging do not violate the Sixth Amendment right to a speedy trial (see § 10.9), people may be able to challenge such delays as violations of the U.S. Constitution’s Fourteenth Amendment right to due process. For example, the right to due process protects a person

²² *Betterman v. Montana* (2016) __ U.S. __ [136 S.Ct.1609; 194 L.Ed.2d 723].

²³ *Smith v. Hooey* (1969) 393 U.S. 374, 383 [89 S.Ct. 575; 21 L.Ed.2d 607].

²⁴ *Barker v. Wingo* (1972) 407 U.S. 514, 530-534 [92 S.Ct. 2182; 33 L.Ed.2d 101]; see also *Doggett v. United States* (1992) 505 U.S. 647, 655-658 [112 S.Ct. 2686; 120 L.Ed.2d 520] (extreme delay presumed to be prejudicial unless state demonstrates otherwise); *Chauncey v. Second Judicial District Court* (9th Cir. 1973) 474 F.2d 1238, 1239-1240 (finding speedy trial violation where prison officials misinformed person as to which out-of-state county the charges were in, resulting in person sending demands for trial to wrong county, where they were ignored).

²⁵ *Strunk v. United States* (1973) 412 U.S. 434, 439-440 [93 S.Ct. 2260; 37 L.Ed.2d 56].

in prison when a prosecutor delays filing a detainer or filing formal charges.²⁶ To show a violation of due process, the defendant must show that the delay caused substantial prejudice to the right to a fair trial and was an intentional device used by the prosecutor or law enforcement agency to gain a tactical advantage.²⁷

10.11 State Constitutional Speedy Trial and Due Process Rights

The California Constitution protects the due process and speedy trial rights of people accused of crimes in California.²⁸

The California constitutional right to a speedy trial applies more broadly than the federal Sixth Amendment right. People with California charges are entitled to a speedy trial starting from the date when an initial felony complaint or misdemeanor complaint is filed.²⁹ The California right to due process also applies to delays prior to arrest or filing of charges, as well as to delays that occur after formal charges are filed. The rights also protect the right to timely notification of charges through the filing of a detainer.³⁰

California courts use the same balancing test for both speedy trial and due process issues under the state constitution. Courts consider whether the delay is intentional or due to negligence, whether the prosecution can show any justification for the delay, and whether the defendant can prove that the delay caused actual prejudice.³¹

Other states have their own constitutional speedy trial and due process laws. A person incarcerated in California with a detainer from another state could possibly argue that a delay in charging, trial, or sentencing violated that state's constitution.³²

10.12 Challenging Violations of Constitutional Speedy Trial and Due Process Rights

A person who is facing a case where charges or trial have been delayed can assert the constitutional right to a speedy trial or due process by send a motion demanding a speedy trial to the court where the charges are pending. The person should attach a signed proof of service form showing

²⁶ People may also be able to argue that pre-accusation delays violate any governing “statute of limitations” requiring that charges be filed within specified time limits. For example, California has a series of statutes requiring that various types of crimes be charged within certain time periods after the crime is committed or discovered. See, e.g., Penal Code §§ 799-805. Other jurisdictions have their own statutes of limitations governing crimes committed there.

²⁷ *United States v. Marion* (1971) 404 U.S. 307, 324 [92 S.Ct. 455; 30 L.Ed.2d 468]; *United States v. Lovasco* (1977) 431 U.S. 83 [97 S.Ct. 2044; 52 L.Ed.2d 756].

²⁸ California Constitution, Article I, § 15.

²⁹ Penal Code § 691(c); *People v. Martinez* (2000) 22 Cal.4th 750, 754 [94 Cal.Rptr. 381]; *People v. Hannon* (1977) 19 Cal.3d 588, 608 [138 Cal.Rptr. 885]; *In re Mugica* (1968) 69 Cal.2d 516, 523-524 [72 Cal.Rptr. 645]; *People v. Vila* (1984) 162 Cal.App.3d 76, 83 [208 Cal.Rptr. 364].

³⁰ *People v. Cave* (1978) 81 Cal.App.3d 954, 963-964 [147 Cal.Rptr.371].

³¹ *People v. Lowe* (2007) 40 Cal.4th 937, 942-946 [56 Cal.Rptr.3d 209] (losing chance to serve concurrent terms does not show actual prejudice; person must show impairment to the ability to defense against the charge); *People v. Martinez* (2000) 22 Cal.4th 750, 754 [94 Cal.Rptr. 381]; *Serna v. Superior Court* (1985) 40 Cal.3d 239, 249 [219 Cal.Rptr. 420].

³² See, e.g., *Zimmerman v. Superior Court* (1967) 248 Cal.App.2d 56, 63 [56 Cal.Rptr. 226] (applying California speedy trial rights to person housed in out-of-state prison with California charges).

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that a copy of the motion has been served on the prosecutor. The person should keep a copy of the motion and make a note of the date it was sent.

A person who is not brought to trial within a reasonable time after making a speedy trial demand can then file a motion asking the court to dismiss the charges. If the court does not dismiss the case, the person could seek relief through whatever procedures are available in the jurisdiction where the charge is pending. In California, a pre-trial petition for writ of mandate and/or prohibition could be brought.³³ If the claim is denied by the state courts, the petitioner can file a petition for writ of habeas corpus in federal court; however, the only federal remedy available prior to conviction is an order requiring authorities to bring the person to trial.³⁴

A person who is convicted can raise speedy trial or due process claims in a direct appeal from the conviction. If a state conviction is affirmed by the state courts, the issue could then be raised in a federal habeas corpus petition.³⁵ Such legal challenges would have to be filed in the jurisdiction where the conviction occurred, whether that be in California, another state or the federal court system.

CALIFORNIA DETAINERS

10.13 Introduction to California Speedy Trial Statutes

A person incarcerated in a California prison who has another unresolved California case usually can get the matter dealt with fairly easily and quickly. There are procedures for requesting resolution of detainers based on pending felony or misdemeanor charges (§ 10.14), criminal convictions for which no sentence has been imposed (§ 10.15), probation violations (§ 10.16), and traffic tickets (§ 10.17).

10.14 California Felony and Misdemeanor Charges (Penal Code § 1381)

People incarcerated in California prisons who are facing additional California misdemeanor or felony charges have a statutory right to a speedy trial under Penal Code § 1381. The right applies regardless of whether a detainer has been filed with prison officials.³⁶ Penal Code § 1381 requires a prosecutor to bring a case to trial within 90 days after receiving a person's written demand for a speedy trial.³⁷ It is usually in a person's best interest to file a § 1381 demand as soon as possible after learning about any unresolved charges (see § 10.6).

³³ *Serna v. Superior Court* (1985) 40 Cal.3d 239, 263 [219 Cal.Rptr. 420]. Petitions for writ of mandate and/or prohibition are discussed in Chapter 15.

³⁴ *Braden v. 30th Judicial Circuit Court of Kentucky* (1973) 410 U.S. 484, 489-490 [93 S.Ct. 1123; 35 L.Ed.2d 443].

³⁵ Direct appeals from California criminal convictions are summarized in Chapter 14. Federal petitions for writ of habeas corpus are discussed in Chapter 16.

³⁶ Penal Code § 1381 also applies to persons serving sentences of more than 90 days in a county jail, juveniles incarcerated in the CDCR Division of Juvenile Justice (DJJ), or persons civilly committed for narcotics addictions. Penal Code § 1381.5 provides speedy trial rights for people in federal prisons facing California criminal charges, so long as they are incarcerated in a federal prison located in California.

³⁷ *People v. Jacobs* (1972) 27 Cal.App.3d 246, 257-258 [103 Cal.Rptr. 536].

To trigger the Penal Code § 1381 timeline, a person must send a written notice and demand for trial to the prosecutor. The notice must state where the person is incarcerated and state that the person wants to be brought to trial. The statute also requires that a jail or prison official provide information about the nature, length and expected release date of the person's current term.³⁸ The CDCR should provide a person who wants to file a § 1381 demand with a packet of forms that includes a CDCR Form 643 Notice and Demand for Trial (Appendix 10-B). The person should fill out the form and forward it to the prison case records office so that prison staff can add the other required information and mail the form to the prosecutor by certified mail.³⁹ People should try to follow the requirements of § 1381 carefully, as failing to do so might not trigger the speedy trial timeline.⁴⁰

Upon receiving a § 1381 request, the district attorney should fill out the receipt portion of Form 643 and send it back to the prison case records office. The person must then be brought to trial within 90 days after the date on which the district attorney received the §1381 notice and demand.⁴¹ However, the 90-day period will be tolled (meaning the clock will stop running) if the person requests or agrees to a continuance beyond the 90 day period; a new 90-day period will begin running on the date to which the matter is continued.⁴² Also, the 90-day period will stop running if the person is unavailable for trial due to criminal proceedings in another case.⁴³

If the 90-day time period passes without the prosecutor bringing the case to trial, then the person in prison, the CDCR, the court or the prosecutor can request dismissal of the charges.⁴⁴ A person in prison can send a motion to the court requesting dismissal under Penal Code § 1381 and stating the case name and number and the date upon which the speedy trial notice was sent and/or received. Alternatively, there are CDCR forms that a person can use to request dismissal: CDCR Form 1006 Cover Memo - Motion to Dismiss, CDCR Form 668 Affidavit in Support of Motion to Dismiss Pending Charges, CDCR Form 669 Motion to Dismiss Criminal Charges Pending, and CDCR Form 670 Order of Dismissal (all in Appendix 10-C). Case records staff should assist with the preparation and mailing of these forms.⁴⁵

³⁸ Penal Code § 1381.

³⁹ DOM § 72040.6.1

⁴⁰ *People v. Garcia* (1985) 171 Cal.App.3d 1187 [217 Cal.Rptr. 783] (letter inquiring if charges had been dismissed was not a demand to trial); *Reynolds v. Superior Court* (1980) 113 Cal.App.3d 510, 514 [169 Cal.Rptr. 868] (notice sent to court clerk but not to district attorney was insufficient); but see *Smith v. Superior Court* (1984) 159 Cal.App.3d 1172, 1176 [206 Cal.Rptr. 282] (notice that was not endorsed by a prison official was still valid, where the form provided to person in prison did not contain a place for endorsement or notice that an endorsement was necessary); *People v. Hughes* (1974) 38 Cal.App.3d 670, 675 [113 Cal.Rptr. 508] (motion made in open court for dismissal due to speedy trial denial provided adequate notice to start § 1381 timeline).

⁴¹ Penal Code § 1381; see also *Smith v. Superior Court* (1984) 159 Cal.App.3d 1172, 1175 [206 Cal.Rptr. 282]. See also *Chavez v. Superior Court* (1984) 153 Cal.App.3d 130, 131-132 [200 Cal.Rptr. 75] (90-day timeline applied even when person has less than 90 days to serve when filing request for trial).

⁴² Penal Code § 1381

⁴³ *People v. Boggs* (1985) 166 Cal.App.3d 851, 856 [212 Cal.Rptr. 683].

⁴⁴ Penal Code § 1381.

⁴⁵ DOM § 72040.6.1.

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If the case dismissed under § 1381 includes only misdemeanor offenses, the prosecutor cannot re-file the case. On the other hand, a prosecutor can re-file any case charging a felony, a mix of felonies and misdemeanors, or “wobbler” offenses (crimes that could be charged as either felonies or misdemeanors) unless the charges have already been dismissed one time before.⁴⁶ Furthermore, there are exceptions under which felony charges can be re-filed even if the charges have been dismissed twice. Among the exceptions are situations in which substantial new evidence has been discovered that could not previously have been known to the prosecutors or in which a prior dismissal was directly due to intimidation of a material witness.⁴⁷ A violent felony as defined in Penal Code § 667.5(c) may be re-filed after two dismissals if one or both dismissals was due to “excusable neglect” by the prosecutor.⁴⁸ Also, one court has held that a person who is convicted after a case is re-filed is entitled to pre-sentence credits for time in custody after the dismissal.⁴⁹

If charges are re-filed a person must file a new § 1381 demand for trial in order to start the 90-day timeline for bringing the case to trial.⁵⁰ Also, the person may be able to argue that the second (or third) round of prosecution violates the federal and state constitutional rights to a speedy trial (see §§ 10.9-10.11).⁵¹

10.15 California Convictions That Have Not Been Sentenced

The section 1381 rules and procedures (discussed in § 10.14) can be used to demand sentencing in a California criminal case in which a person has already been convicted but no sentence has yet been imposed.⁵²

10.16 California Probation Violation Charges

A person may face charges for violating conditions of probation in another previous California case.⁵³ There are two ways to resolve such charges during the current term. One is the process set forth in Penal Code § 1203.2a, which is meant to give people an opportunity to serve sentences on

⁴⁶ Penal Code § 1387; *Crockett v. Superior Court* (1975) 14 Cal.3d 433, 437 [121 Cal.Rptr. 457].

⁴⁷ Penal Code § 1387.

⁴⁸ Penal Code § 1387.1.

⁴⁹ *People v. Queen* (1987) 194 Cal.App.3d 501 [239 Cal.Rptr. 555].

⁵⁰ *People v. Eldridge* (1997) 52 Cal.App.4th 91, 95-96 [60 Cal.Rptr.2d 400].

⁵¹ *People v. Hill* (1984) 37 Cal.3d 491, 495-496 [209 Cal.Rptr. 323].

⁵² Penal Code § 1381.

⁵³ A probation officer who knows that a person has been sent to prison has a duty, within a reasonable period of time, to notify the person of a pending probation violation charge and the right to resolve it. *People v. Young* (1991) 228 Cal.App.3d 171, 175 [278 Cal.Rptr.784]; but see *People v. Madrigal* (2000) 77 Cal.App.4th 1050, 1053-1054 [92 Cal.Rptr.2d 205] (no duty to give notice of probation violation charge where probation officer did not know of person's imprisonment due to person absconding from probation).

probation violations fully concurrent with their current prison terms.⁵⁴ The other option is the Penal Code § 1381 procedure described in § 10.14.

The exact procedures that apply, and the decision whether to use the § 1203.2a procedure or the § 1381 procedure, depends on whether the judge who granted probation decided at that time what sentence the person would serve for a future probation violation. If the judge did decide on a sentence, the sentence was “imposed” but “execution” was suspended. If the judge did not decide on a sentence, “imposition” of sentence was suspended. Information about whether or not sentence was imposed should be in the sentencing transcripts or other court documents about the hearing in which probation was granted. A person may also be able to obtain the information from the attorney who worked on the case.

The procedure to demand resolution of a probation violation charge under Penal Code § 1203.2a is simple. Prison staff can provide a CDCR Form 616 Request for Disposition of Probation, Waiver of Appearance and Right to Attorney (attached as Appendix 10-D). The person in prison must fill out the form and present it to case records staff, who should verify the request and fill in information about the current sentence and release date. Form 616 requires the person in prison to waive (give up) the right to an attorney and to be present at the probation violation proceedings.⁵⁵ The case records staff should then send the form to the probation officer and the court by certified mail.⁵⁶

A probation officer who receives a § 1203.2a demand must notify the court about the new prison commitment within 30 days. The same 30-day timeline applies if the probation officer receives a notice of the commitment from the person in prison, their attorney, or prison officials, even if the person has not filed a formal § 1203.2a request for disposition. If the probation officer fails to comply

⁵⁴ *Pompi v. Superior Court* (1982) 139 Cal.App.3d 503, 507 [189 Cal.Rptr. 52]. § 1203.2a applies even when the prison commitment is for a parole violation rather than for a new conviction. *In re Klein* (1961) 197 Cal.App.2d 58, 62 [17 Cal.Rptr. 71]. It also applies to people on probation in California who are in prison in another state or in any federal prison. *People v. Broughton* (2003) 107 Cal.App.4th 307, 320 [133 Cal.Rptr.2d 161] (abrogated on other grounds by *People v. Wagner* (2009) 45 Cal.4th 1039, 1056 [90 Cal.Rptr.3d 26]). The Penal Code § 1203.2a process is also available to people serving felony sentences in county jails. *People v. Mendoza* (2015) 241 Cal.App.4th 764 [194 Cal.Rptr.3d 273]. However, it does not apply when a person is serving a jail term for a misdemeanor conviction. *People v. Blanchard* (1996) 42 Cal.App.4th 1842, 1847-1848 [50 Cal.Rptr.2d 614].

⁵⁵ Some courts in the past suggested that Penal Code § 1203.2a may violate due process because it allows probation revocation in cases where sentence has previously been imposed without a formal revocation hearing or representation by a lawyer. Those courts also held that any constitutional problem cannot be used to deprive a person of the benefit of requesting resolution pursuant section 1203.2a. *In re Flores* (1983) 140 Cal.App.3d 1019, 1025 [190 Cal.Rptr. 388]; *People v. Timmons* (1985) 173 Cal.App.3d 1000, 1006 [219 Cal.Rptr. 611].

⁵⁶ Penal Code § 1203.2a; DOM § 72040.6.1. Courts vary as to whether they require strict compliance with the section 1203.2a procedure to trigger the disposition timelines. Some courts have allowed leeway. *People v. Murray* (2007) 155 Cal.App.4th 149 [65 Cal.Rptr.3d 731] (letter sent to probation officer by CDCR was valid demand for disposition, even though it did not have person’s signature or waiver of rights to formal revocation hearing and counsel); *People v. Carr* (1974) 43 Cal.App.3d 441, 445-446 [117 Cal.Rptr. 714] (court with “actual knowledge” of fact of probation and prison commitment must act within time limits). Others have been stricter. *People v. Hall* (1997) 59 Cal.App.4th 972 [69 Cal.Rptr.2d 826] (timelines not triggered by notice to probation officer that defendant was “transferred” to prison); *People v. Como* (1975) 49 Cal.App.3d 604, 609 [123 Cal.Rptr. 86] (court did not lose jurisdiction where it was only reported to the court that defendant was sentenced on a new charge but not that defendant was sent to prison). See also *People v. Bethea* (1990) 223 Cal.App.3d 917, 922 [272 Cal.Rptr. 903] (person in Nevada prison who signed form requesting disposition of California probation violation without a specific waiver of rights did not waive rights to counsel or to appearance at revocation hearing).

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with the 30-day timeline, the court loses jurisdiction to revoke probation or sentence the person on the probation violation charge.⁵⁷

After the probation officer timely notifies the court of a § 1203.2a demand, the court must act quickly to resolve the case. If the case is one in which a sentence was previously imposed but execution was suspended, the court must order execution of sentence (or make some other final order resolving the charge) within 60 days. If the case is one in which no sentence was previously imposed, the court must impose sentence within 30 days. Failure to meet either of these timelines means that the court will lose jurisdiction over the charge and cannot find a probation violation or execute or impose a sentence.⁵⁸

When imposing a sentence or executing a previously imposed sentence, the court can decide to run the probation revocation term either concurrent (at the same time) or consecutive (one after another) with the current prison term.⁵⁹ If the court runs the terms concurrently, then the sentence for the probation violation case will be deemed to have started running on the date that the person arrived in the CDCR to serve the original commitment term, which is more favorable to a person than the usual rule that a concurrent term starts running on the date of sentencing.⁶⁰ If the court decides to run the terms consecutively, then the shorter (subordinate) term normally will be set at one-third of the mid-term (unless an exception applies) and will start to run only when the longer (principle) term ends (see § 10.6).

In addition to the Penal Code § 1203.2a procedure, the Penal Code § 1381 procedures and rules (see § 10.14) apply to people who are facing probation revocations.⁶¹ A person may want to use the § 1381 procedure if the court that granted probation did not select a sentence, and they do not want to give up the rights to an attorney and to personally appear at the proceedings. However, there can be drawbacks to using the § 1381 procedures rather than the § 1203.2a process. First, a person who demands sentencing on a probation matter under § 1381 loses the special opportunity to have any concurrent sentence date back to the time of the initial prison commitment. Second, if the prosecutor does not bring the probation violation case to a hearing within the § 1381 timeline, the charge can be re-filed one time so long as the probationary period has not expired.⁶²

⁵⁷ Penal Code § 1203.2a; *In re Hoddinott* (1996) 12 Cal.4th 992, 996-997, 1001 [50 Cal.Rptr.2d 706].

⁵⁸ Penal Code § 1203.2a; *In re Hoddinott* (1996) 12 Cal.4th 992, 999 [50 Cal.Rptr.2d 706]; *In re Mancillas* (2016) 2 Cal.App.5th 896, 906-911 [200 Cal.Rptr.3d 514]; *People v. Murray* (2007) 155 Cal.App.4th 149, 155-156 [65 Cal.Rptr.3d 731]; *People v. Holt* (1991) 226 Cal.App.3d 962, 967 [277 Cal.Rptr. 323]. Note that if the probation officer or prison officials notify the court of the person's new commitment, the court must meet the 60-day timeline for executing a previously-imposed sentence even if the defendant has not filed a § 1203.2a demand; however, the 30-day timeline for imposing a sentence does not start to run until the court receives a formal request from the person waiving the rights to be present and to counsel at sentencing. *In re Hoddinott* (1996) 12 Cal.4th 992, 999-1001 [50 Cal.Rptr.2d 706].

⁵⁹ *People v. Ellestad* (1985) 168 Cal.App.3d 663, 665-666 [214 Cal.Rptr. 329].

⁶⁰ Penal Code § 1203.2a.

⁶¹ *People v. Wagner* (2009) 45 Cal.4th 1039, 1055-1056 [90 Cal.Rptr.3d 26]; *Rudman v. Superior Court* (1973) 36 Cal.App.3d 22, 27 [111 Cal.Rptr. 249].

⁶² *People v. Wagner* (2009) 45 Cal.4th 1039, 1059-1060 [90 Cal.Rptr.3d 26].

10.17 California Traffic Tickets

Vehicle Code § 41500 states that a person incarcerated in a California prison cannot be prosecuted and cannot have a driver's license suspended, revoked or refused for any *non*-felony traffic tickets that were unresolved at the time they are committed to the CDCR.⁶³ This means that the traffic ticket must be dismissed. There are a few exceptions; a non-felony traffic offense may still be prosecuted if it involved reckless driving, driving under the influence, or causing bodily injury while driving under the influence, or if it is a type of offense that would require the Department of Motor Vehicles (DMV) to immediately revoke or suspend a driver's license upon conviction.⁶⁴ Also, dismissal is not required for any offense committed while on community release or on parole.⁶⁵

A person does not have to take any action to get the benefit of the Vehicle Code § 41500 ban on prosecution of non-felony traffic offenses.⁶⁶ Nonetheless, a person may want to go ahead and request dismissal of outstanding traffic warrants or charges by writing to the presiding judge of the traffic court in the county in which the tickets were issued. The addresses of the traffic courts should be available in directories in the prison law library. The letter should request dismissal pursuant to Vehicle Code § 41500 and should state where the person is incarcerated, the docket number of the traffic case, and, if possible, the warrant citation number. When the court dismisses the charge, it should send a notice of the dismissal to the person.

OUT-OF-STATE AND FEDERAL DETAINERS

10.18 Overview of Federal and Out-of-State Detainers

People in California prisons who have charges from other states or the federal government usually can choose to get the charges resolved. The process, and the extent to which a person has a right to get speedy resolution of the charges, will depend on various factors including the type of charges, where the charges are pending, and whether a formal detainer has been filed.

It is very important for people in California prisons to be aware that the law governing a detainer is the law of the state or federal court district where the charges are pending, and NOT California laws or California court cases.⁶⁷ The laws and their interpretation may differ from state to state. This Chapter cannot provide detailed information about the law in every state and federal court district. However, it does attempt to alert people to the major disagreements among the courts of various jurisdictions.

The most common way to resolve out-of-state or federal charges is to demand a trial under the Interstate Agreement on Detainers (IAD). § 10.19 describes the situations in which the IAD does

⁶³ Vehicle Code § 41500(a)-(b). One court has held that the constitutional right to equal protection is not violated by denying this benefit to people serving felony terms in county jails. *People v. Lopez* (2013) 218 Cal.App.4th Supp. 6 [160 Cal.Rptr.3d 678].

⁶⁴ Vehicle Code § 41500(d), (f).

⁶⁵ Vehicle Code § 41500(e).

⁶⁶ *Joseph v. Superior Court* (1992) 9 Cal.App.4th 498, 508-509 [11 Cal.Rptr.2d 757].

⁶⁷ See e.g., *In re Shapiro* (1975) 14 Cal.3d 711, 714-715 [122 Cal.Rptr. 768]; *In re Fabricant* (1981) 118 Cal.App.3d 115, 120 [173 Cal.Rptr. 245].

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and does not apply. § 10.21 discusses the procedures for demanding a trial under the IAD and moving for dismissal of charges due to violation of the IAD rules.

If the IAD does not apply, a person may still be able to get out-of-state or federal charges resolved by negotiating with the prosecutor (see § 10.6). Alternatively, a person may try to assert the federal constitutional Sixth Amendment right to a speedy trial or Fourteenth Amendment right to due process, and then ask for dismissal if the state unfairly delays in prosecuting the charges (see § 10.9-10.10).⁶⁸ Some states also have their own laws protecting speedy trial rights that may extend to people held in prisons out-of-state (See, e.g., discussion of California speedy trial rights at § 10.11).

10.19 Situations in which the Interstate Agreement on Detainers (IAD) Applies

The IAD provides a process for a person to get transferred so that pending out-of-state or federal charges can be resolved. The process can be started at the person in prison's request or at the request of the prosecutor where the charge is pending (see §§ 10.21-10.22). Once a request for disposition is made, the charge must either be resolved promptly or must be dismissed (see §§ 10.23-10.25).

A few basic requirements must be met for the IAD to apply:

- ◆ The jurisdiction where the charges are pending must have agreed to be part of the IAD. Forty-eight states, the federal government, and the District of Columbia have signed on to the IAD; however, Mississippi and Louisiana are not parties to the IAD.⁶⁹ In California, the IAD has been enacted as Penal Code § 1389.⁷⁰
- ◆ The jurisdiction where the charges are pending must actually have filed a detainer and California prison officials must have received it.⁷¹ There is no way to force a prosecutor to file a detainer; however, if the prosecutor acts in bad faith or fails to exercise due diligence, some courts may dismiss the charges pursuant to speedy trial laws, especially if the delay in filing a detainer caused harm to the person in prison.⁷² Also, people should be aware that the IAD does not apply to charges that are not included in the detainer,

⁶⁸ See, e.g., *State v. Nickerson* (Mont. 2014) 374 Mont. 354, 356-357 [322 P.3d 421] (even though the IAD did not apply, court must address whether delay violated speedy trial rights).

⁶⁹ The list of the parties to the IAD appears on the National Center for Interstate Compacts website, www.apps.csg.org/ncic/.

⁷⁰ Although the IAD is in the state statutes, legal issues about the application of the IAD are questions of federal law. *Cuyler v. Adams* (1981) 449 U.S. 433, 442 [101 S.Ct. 703; 66 L.Ed.2d 651].

⁷¹ A writ of habeas corpus ad prosequendum directing production of a person for trial on federal or out-of-state criminal charges is not a detainer under the IAD. *United State v. Mauro* (1978) 436 U.S. 340, 349 [98 S.Ct. 1834; 56 L.Ed.2d 329]; see also *State ex rel. Dye v. Bradshaw* (Oh. 2014) 138 Ohio St.3d 172, 174 [5 N.E.3d 592]; *State v. Baker* (N.J. 2009) 198 N.J. 189, 192-194 [966 A.2d 488]. However, the IAD protections are triggered if the government files a detainer and then obtains custody by means of a writ of habeas corpus ad prosequendum. *United States v. Mauro* (1978) 436 U.S. 340, 349 [98 S.Ct. 1834; 56 L.Ed.2d 329]. Also, a district attorney's letter to a warden inquiring whether and when a person could be released may be sufficient to activate the IAD. *People v. Cella* (1981) 114 Cal.App.3d 905, 917-918 [170 Cal.Rptr. 915].

⁷² *State v. Welker* (Wa. 2006) 157 Wash.2d 557, 564-568 [141 P.3d 8].

such as unrelated new charges added after an IAD disposition request was made or after a person is transferred to the charging state.⁷³

- ◆ The detainer must be for a pending new criminal charge.⁷⁴ Courts are divided about whether the IAD applies when there has been a conviction but no sentence has been entered.⁷⁵ (§ 10.27 discusses what can be done regarding an un-sentenced out-of-state conviction if the IAD does not apply.) It is well-established that the IAD does not apply when a detainer is based on a probation violation⁷⁶ or a parole violation.⁷⁷ (§ 10.30 discusses what can be done for out-of-state probation or parole violation charges.) The IAD also does not apply to ICE immigration detainees.⁷⁸ (See Chapter 13 for information on immigration detainees.)
- ◆ The person against whom the detainer has been placed must currently be serving “a term of imprisonment in a penal or correctional institution.”⁷⁹ It is undisputed that this requirement is met if a person is serving a criminal sentence in state prison, but at least one state has held that a criminal term in county jail does not qualify.⁸⁰ It is unclear whether a sentence for a probation or parole violation meets the requirement. The requirement is not met if the person is in jail awaiting disposition or sentencing on criminal or parole revocation charges,⁸¹ is civilly committed in a mental hospital,⁸² or is out on parole.⁸³

⁷³ *People v. Oiknine* (1999) 79 Cal.App.4th 21, 26-27 [93 Cal.Rptr.2d 720] (listing cases in which other states and federal courts reached similar conclusions).

⁷⁴ Penal Code § 1389, article III(a).

⁷⁵ *Gilbert v. State* (Ind.App. 2013) 982 N.E. 2d 1087, 1091 (stating that most courts have held that the IAD does not apply to un-sentenced convictions); but see *Tinghitella v. California* (9th Cir. 1983) 718 F.2d 308, 311-312 (the IAD applies to un-sentenced convictions).

⁷⁶ *Carchman v. Nash* (1985) 473 U.S. 716, 726 [105 S.Ct. 3401; 87 L.Ed.2d 516].

⁷⁷ *Hopper v. United States Parole Commission* (9th Cir. 1983) 702 F.2d 842, 846.

⁷⁸ *Argiz v. United States Immigration* (7th Cir. 1983) 704 F.2d 384, 387.

⁷⁹ Penal Code § 1389, article III(a). It does not matter if the detainer was entered before the person began serving the term of imprisonment, so long as the person is serving a term when the request for disposition is made. *People v. Swafford* (Mich. 2009) 483 Mich. 176, 9-10 [2 N.W.2d 902].

⁸⁰ Compare *Dawes v. State* (Fla.App. 2014) 135 So.3d 420,422-423 (one-year jail sentence not term of imprisonment under IAD) with *State v. Springer* (Tenn. 2013) 406 S.W.3d 526, 538 (jail term covered by IAD) and *People v. Walton* (Col.App. 2007) 167 P.3d 163, 166-167 (one-year jail sentence as condition of probation met requirement).

⁸¹ *United States v. Dobson* (3d Cir. 1978) 585 F.2d 55, 58-59 (IAD does not apply while a person is awaiting trial or incarcerated on unresolved parole violation charge); *State v. Hargrove* (Kan. 2002) 45 P.3d 376, 383 [273 Kan. 314] (the IAD does not apply if person has been convicted but not yet sentenced); *People v. Garner* (1990) 224 Cal.App.3d 1363, 1369 [274 Cal.Rptr. 298] (detainer filed while person in jail awaiting trial did not trigger the IAD protections, where detainer did not follow the person to state prison after he was convicted); *People v. Zetsche* (1987) 188 Cal.App.3d 917, 924-925 [233 Cal.Rptr.720]; *People v. Rhoden* (1989) 216 Cal.App.3d 1242, 1250 [265 Cal.Rptr. 355] (term of imprisonment did not start until resolution of a motion for new trial).

⁸² Penal Code § 1389, article VI(b).

⁸³ *United States v. Reed* (9th Cir.1980) 620 F.2d 709, 711.

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10.20 Notification of a Federal or Out-of-State Detainer

When a federal or out-of-state prosecutor files a detainer, California prison officials are supposed to notify the person about the detainer and whether the IAD applies.⁸⁴ However, people should be aware that prison staff may make mistakes about whether a detainer can be resolved under the IAD.

As with other types of detainers, the CDCR gives notice of a federal or out-of-state detainer via a CDCR Form 661 Inmate Notification and Agency Acknowledgment of Detainer Receipt (see Appendix 10-A). The form states when the detainer was filed, by what jurisdiction, and the nature of the charge. The form also shows what options are available to the person. If the records office staff think that the IAD applies, they will check the box that says "You may request disposition of untried charges in accordance with Section 1389 P.C." The CDCR Form 1664 Agreement on Detainers Form I Notice of Untried Indictment, Information or Complaint and of Right to Request Disposition (see Appendix 10-E) should be attached to Form 661.

After receiving notice that a detainer has been filed, a person should consider the possible risks and benefits of attempting to resolve the charge (see § 10.6).

10.21 Requesting Disposition Under the IAD

A person who wants to request disposition of a federal or out-of-state charge under the IAD should fill out the CDCR Form 1665 Agreement on Detainers Form II Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictments, Information or Complaints (see Appendix 10-F). Form 1665 will act as a request for final disposition of pending charges in *all* existing detainers from the other jurisdiction.⁸⁵ The request also waives (gives up) any right for a formal extradition proceeding.⁸⁶

After a person completes Form 1665, they must send the form to the prison case records staff who handle IAD requests.⁸⁷

Using the official IAD Form II and sending it to the right California prison staff is important because the IAD's formal requirements usually must be met before its speedy trial rules are triggered; other sorts of "self-help" efforts (such as a motion for speedy trial, letter, or phone call to the

⁸⁴ Penal Code § 1389, article III(c).

⁸⁵ Penal Code § 1389, article III(d).

⁸⁶ Penal Code § 1389, article III(e); see *Cuyler v. Adams* (1981) 449 U.S. 433, 445 [101 S.Ct. 703; 66 L.Ed.2d 651]; see also *State ex rel. Pharm v. Bartow* (Wis. 2007) 298 Wis.2d 702, 727 [727 N.W.2d 1] (person who was transferred for trial and sentencing could be kept incarcerated in detainer state on a Sexually Violent Predator civil commitment after criminal sentence expired).

⁸⁷ See DOM § 72040.6.2.2.

prosecutor or court) will not start the IAD process.⁸⁸ The only situation in which some courts might make an exception is where officials obstruct a person's efforts by, for example, refusing to provide or accept the official IAD forms.⁸⁹

When the CDCR staff receives an IAD Form II, they should then fill out two forms – the Agreement on Detainers Form III Certificate of Inmate Status and Agreement on Detainers Form IV Offer To Deliver Temporary Custody. The CDCR staff should send all of the IAD forms to the prosecutor and court for the jurisdiction that issued the detainer. There is no set timeline for this, although the IAD states that prison officials are supposed to act “promptly.”⁹⁰

When the federal or out-of-state prosecutor receives the IAD forms, the prosecutor should start the process of getting the person transferred for further proceedings on the case by filing an Agreement on Detainers Form V Request For Temporary Custody.

Since the IAD timelines do not start running until the federal or out-of-state prosecutor receives the IAD request and certification forms (see § 10.23), a person should keep a copy of the IAD Form II, make a note about when the form was submitted to the California prison officials, and keep any responses showing what has happened with the IAD request. A person who does not receive any information showing that the form is being properly routed should ask the case records staff about the status of the request. If the person does not get a satisfactory response, he or she could try contacting California's IAD Administrator. The address⁹¹ is:

IAD Administrator
California Department of Corrections and Rehabilitation
9825 Goethe Road, Suite 200
Sacramento, CA 95827

10.22 Prosecutor's Request for Disposition Under the IAD

Even if the person in prison does not request disposition of charges under the IAD, the federal or out-of-state prosecutor who placed the detainer can request temporary custody of the person to

⁸⁸ *Lara v. Johnson* (9th Cir. 1998) 141 F.3d 239, 242 (letter to requesting state did not trigger the IAD time lines); *Johnson v. Stagner* (9th Cir. 1986) 781 F.2d 758, 762 (IAD not triggered where person in prison filed habeas petition, as he did not give notice of the IAD demand to the prosecutor and failed to send any certificate of status through the custodial prison officials); *Clutter v. Commonwealth* (Ky. 2010) 322 S.W.3d 59, 64 (the IAD not triggered when the person refused to follow procedures to get certificate of status); *State v. Dodson* (Mont. 2009) 354 Mont. 28, 38-41 [221 P.3d 687] (motion to dismiss did not trigger 180-day IAD deadline); *Commonwealth v. Copson* (Mass. 2005) 444 Mass. 609, 617-621 [830 N.E.2d 193] (motion for speedy trial and handing copy to prison officials did not trigger the IAD); *People v. Garner* (1990) 224 Cal.App.3d 1363, 1370-1371 [274 Cal.Rptr. 298]; *People v. Rhoden* (1989) 216 Cal.App.3d 1242, 1252-1253 [265 Cal.Rptr. 355] (the IAD not triggered by letter to prosecutor).

⁸⁹ *Clutter v. Commonwealth* (Ky. 2010) 322 S.W.3d 59, 64 (citing cases in which courts have made exceptions)

⁹⁰ Penal Code § 1389, article III(a)-(b).

⁹¹ The addresses for the IAD Administrators in other states are in the DOM following § 72040.13.

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resolve the charges.⁹² The prosecutor must get approval of the court in which the charges are pending and serve a written notice on the California officials who currently have custody of the person.⁹³

The governor of California will have 30 days to grant or deny the request. If the Governor grants the request, California prison officials should send the federal or out-of-state prosecutor a certificate regarding the length of the person's term and the time left to serve. The California prison officials will also send the certificate and a notice of the request for custody to any other jurisdiction that has issued a detainer against the person.⁹⁴

When the prosecutor requests transfer under the IAD, the person in prison retains all rights to object to the transfer under the Uniform Criminal Extradition Act. These include the right to a pre-transfer hearing at which the person will be informed of the other jurisdiction's request for custody, the right to an attorney, and the right to file a petition for writ of habeas corpus challenging extradition.⁹⁵ (See §§ 10.32-10.36 for more information on extradition procedures.)

10.23 Timelines for Prosecuting a Case After a Request for Disposition Under the IAD

The IAD sets timelines for getting the federal or out-of-state charges resolved. If the person in prison initiates the IAD request, the case must be brought to trial within 180 days after the request for trial is delivered to the prosecutor.⁹⁶ If the prosecutor initiates the IAD transfer, then the prosecutor must begin formal criminal proceedings within 120 days after the person arrives in the charging state.⁹⁷

The IAD requires the court to dismiss the charges if the prosecutor does not comply with the IAD deadline.⁹⁸ The prosecutor cannot evade the IAD dismissal requirements by voluntarily dismissing the charges and then re-filing them.⁹⁹

Courts have reached different decisions as to which timeline applies when both the defendant and the prosecutor request transfer under the IAD. A few jurisdictions hold that a person in prison who initiates the IAD waives any right to a shorter time limit for prosecutor-initiated proceedings. Other jurisdictions hold that the timeline that applies depends on whether it was the person or the

⁹² Penal Code § 1389, article IV(a).

⁹³ Penal Code § 1389, article IV(a).

⁹⁴ Penal Code § 1389, article IV(b).

⁹⁵ *Cuyler v. Adams* (1981) 449 U.S. 433, 449-450 [101 S.Ct. 703; 66 L.Ed.2d 641]; but see *In re Garcia* (Pa. 2009) 2009 P.A. Super. 210 [984 A.2d 506] (UCEA 30-to-90-day time limit for execution of governor's warrant did not apply to prosecutor's IAD request).

⁹⁶ Penal Code § 1389, article III(a); *Fex v. Michigan* (1993) 507 U.S. 43, 49-52 [113 S.Ct. 1085; 122 L.Ed.2d 406].

⁹⁷ Penal Code § 1389, article IV(c).

⁹⁸ Penal Code § 1389, article V(c); see, e.g., *United States v. Johnson* (9th Cir. 1999) 196 F.3d 1000, 1004 (case dismissed for failure to bring person to trial within 180 days); *Marshall v. Superior Court* (1986) 183 Cal.App.3d 662, 669 [228 Cal.Rptr. 364] (similar).

⁹⁹ *Marshall v. Superior Court* (1986) 183 Cal.App.3d 662, 668-669 [228 Cal.Rptr. 364]; *People v. Christensen* (Ill. 1984) 102 Ill.2d 321, 329-330 [465 N.E.2d 93].

prosecutor who first initiated the IAD procedure. Other jurisdictions apply both timelines and look to see if either timeline has been violated.¹⁰⁰

There are many court cases interpreting and applying the IAD timelines. One important rule is that the 180-day time limit for bring a case to trial after a person in prison makes an IAD request does not start running until the date the prosecutor and court receive the IAD request. Delays that happen before the time starts running will not result in dismissal. For example, a person will not be entitled to dismissal if the state with custody delayed in notifying the person about the detainer or failed to send the IAD forms to the state that issued the detainer, or if the forms got lost in the mail.¹⁰¹

Courts have disagreed as to whether the IAD timelines cease to apply when the sending state places the person on parole after the detainer state takes custody of the person. The Ninth Circuit Court of Appeals has held that the IAD continues to apply.¹⁰² Some other jurisdictions have held that it does not.¹⁰³

The IAD's 180-day or 120-day period is tolled (meaning the clock stops running) “whenever and for as long as the person is unable to stand trial.”¹⁰⁴ There are three different interpretations of the term “unable to stand trial.” The Fifth Circuit interprets the term to mean a person is unable to stand trial only when physically or mentally incapacitated. The Second, Fourth and Ninth Circuits apply the same tolling provisions as the Speedy Trial Act (18 U.S.C. § 3161(h)(1)-(9)), which has a list of circumstances in which time is tolled. The Seventh and Eighth Circuits determine a person is unable to stand trial whenever the person is “legally or administratively unavailable,” as decided on a case-by-case basis.¹⁰⁵

¹⁰⁰ See discussion of various approaches in *Matthews v. Commonwealth* (Ky. 2005) 168 S.W.3d 14, 17-19 and *Hopkins v. LaFortune* (Ok. 2016) 2016 Ok. Cr. 25 [394 P.3d 1283].

¹⁰¹ *Fex v. Michigan* (1993) 507 U.S. 43, 49-52 [113 S.Ct. 1085; 122 L.Ed.2d 406]; *United States v. Brewington* (7th Cir. 2008) 512 F.3d 995, 996-997 (no dismissal where court did not receive request for unknown reasons); *United States v. Lualemaga* (9th Cir. 2002) 280 F.3d 1260, 1263-1265 (no dismissal for failure to notify person in prison about right to request disposition, even though detainer state misinformed custody state that person did not fall under the IAD); *Lara v. Johnson* (5th Cir. 1998) 141 F.3d 239, 242-243 (no dismissal due to negligence by prison officials in telling person that the IAD did not apply); *State v. Dodson* (Mont. 2009) 354 Mont. 28, 38-41 [221 P.3d 687] (no dismissal where prison failed to send an IAD request to detainer state); *Bryant v. Commonwealth* (Ky. 2006) 199 S.W.3d 169, 174 (no dismissal where prison staff sent an IAD request to wrong court and attorney); *People v. Zetsche* (1987) 188 Cal.App.3d 917, 925 [233 Cal.Rptr. 720] (no dismissal for failure to notify person about detainer).

¹⁰² *Snyder v. Sumner* (9th Cir. 1992) 960 F.3d 1448, 1454.

¹⁰³ See cases discussed in *Cunningham v. Arkansas* (Ark. 2009) 341 Ark. 99, 103-104 [14 S.W.3d 869].

¹⁰⁴ Penal Code § 1389, article VI(a).

¹⁰⁵ *United States v. Collins* (9th Cir.1996) 90 F.3d 1420, 1426-1427 (summarizing the approaches); see also *State v. Brown* (N.H. 2008) 157 N.H. 555, 559-560 [953 A.2d 1174] (no tolling for period in which defendant was represented by counsel who later withdrew, but tolling during period when defendant was without counsel); *Netzley v. Superior Court* (2008) 160 Cal.App.4th 348, 354-357 [72 Cal.Rptr.3d 773] (adopting the interpretation that a person is unavailable to stand trial whenever the person is legally or administratively unavailable); *People v. Posten* (1980) 108 Cal.App.3d 633, 643 [166 Cal.Rptr. 661] (tolling during time that state's appeal from dismissal order was pending).

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However, courts generally agree that time is tolled for any periods in which a delay is due to the person's own requests or obstructive actions.¹⁰⁶

The IAD also allows “any necessary or reasonable continuance,” if the prosecutor shows “good cause” for extending the timeline requirements.¹⁰⁷ Any time that passes due to such a continuance will not count against the time limits. Courts are split on whether the prosecutor must make the request for the continuance before the 180-day or 120-day time limit runs out.¹⁰⁸ The continuance can be granted only by a judge, not by a clerk. Also, the person has a right to a hearing on the request, at which the person or their lawyer have a right to be present.¹⁰⁹

A person who requests or agrees to a trial date beyond the IAD timelines, waives (gives up) the right to enforce the IAD time limits.¹¹⁰ This is so even if the request or agreement is made by the person's attorney.¹¹¹ The IAD rights may be deemed waived even if the person is unaware that a request for a continuance will waive any right to have the case dismissed.¹¹²

10.24 The Anti-Shuttling Rule After a Request for Disposition Under the IAD

The IAD forbids transferring a person to another jurisdiction where charges are pending and then returning the person to the original custody state without fully resolving the charges.¹¹³ This is called the “anti-shuttling” rule. If the anti-shuttling rule is violated, the charges must be dismissed.¹¹⁴

¹⁰⁶ *State v. Nelson* (N.H. 2010) 161 N.H. 58, 62 [8 A.3d 40] (tolling during time necessary to fulfill defendant's request for court-appointed counsel); *Short v. State* (Wy. 2009) 2009 WY 52 [205 P.3d 195] (defendant's request for delay or preliminary hearing tolled timeline); *Netzley v. Superior Court* (2008) 160 Cal.App.4th 348, 354-357 [72 Cal.Rptr.3d 773] (citing cases from several jurisdictions, and tolling time during which custodial state refused to transfer person because of disciplinary segregation term); *People v. Posten* (1980) 108 Cal.App.3d 633, 642-643 [166 Cal.Rptr. 661] (delay due to person's refusal to travel by air and failure to alert officials to alias used in charging state tolled the timeline). Courts have issued differing decisions on whether the 180-day period is tolled if a person refuses to reaffirm the IAD request for disposition and attempts to withdraw the waiver of extradition. Compare *People v. Garner* (1990) 224 Cal.App.3d 1363, 1373 [274 Cal.Rptr. 298] (tolling) with *Odhinn v. State* (Wy. 2003) 82 P.3d 715, 724 [2003 Wy. 169] (no tolling).

¹⁰⁷ Penal Code § 1389, article III(a) and article IV(c); Scheduling problems and court congestion may be good cause in some situations, but not if there is no indication of any attempt to move the case along within the timelines. *Brown v. Wolff* (9th Cir. 1983) 706 F.2d 902, 906-907; see also *State v. Hill* (S.C. 2014) 409 S.C. 50, 59-60 [760 S.E.2d 802] (good cause based on complexity of case and need for a special evidentiary hearing).

¹⁰⁸ Compare *Commonwealth v. Fisher* (Pa. 1973) 451 Pa. 102, 107-108 [301 A.2d 605] and *State v. Patterson* (S.C. 1979) 273 S.C. 361, 364 [256 S.E.2d 417] (request must be made within the 180- or 120-day period) with *State v. Lippolis* (N.J. 1970) 55 N.J. 354 [262 A.2d 203] and *State v. Hamilton* (Minn. 1978) 268 N.W.2d 56, 61 (timing of request not determinative).

¹⁰⁹ *Stroble v. Anderson* (6th Cir. 1978) 587 F.2d 830, 839-840; *State v. Brown* (N.H. 2008) 157 N.H. 555, 562-573 [953 A.2d 1174] (continuance not effective where court granted it without a hearing).

¹¹⁰ *Reed v. Farley* (1994) 512 U.S. 339, 342-343 [114 S.Ct. 2291; 129 L.Ed.2d 277]; *Brown v. Wolff* (9th Cir. 1983) 706 F.2d 902, 907.

¹¹¹ *New York v. Hill* (1999) 528 U.S. 110, 115-118 [120 S.Ct. 659; 145 L.Ed.2d 560]; *State v. Johnson* (Iowa 2009) 770 N.W.2d 814, 822-823; *People v. Sampson* (1987) 191 Cal.App.3d 1409, 1417 [237 Cal.Rptr. 100].

¹¹² *Drescher v. Superior Court* (1990) 218 Cal.App.3d 1140, 1147-1148 [267 Cal.Rptr. 661]; see also *United States v. Black* (9th Cir. 1979) 609 F.2d 1330, 1334.

¹¹³ Penal Code § 1389, article III(d) and article IV(e).

¹¹⁴ Penal Code § 1389, article III(d) and article IV(e).

The prosecutor cannot get around the anti-shuttling rule by voluntarily dismissing the original charges, allowing the person to be returned to the custody state, and then refile the charges anew.¹¹⁵

The IAD anti-shuttling provisions are strictly applied. The IAD prohibits even a transfer between a state prison or jail and a federal prison or jail in the same state.¹¹⁶ Even a very short transfer violates the IAD, though the IAD might not be violated if the person is taken to court and returned to the detainer state within the same day.¹¹⁷ However, the anti-shuttling rule does not prohibit transfer back to the original custody state on new charges filed in that state that are unrelated to the original conviction and sentence.¹¹⁸

A person who asks to be sent back to the state which first had custody will be deemed to have waived (given up) the right to dismissal of the charges under the IAD anti-shuttling rule.¹¹⁹ This is so even if the person did not know that the transfer request would waive the right to dismissal.¹²⁰

10.25 Requesting Dismissal of a Case Due to Violation of the IAD Timeline or Anti-Shuttling Rule

Charges are not automatically dismissed when the IAD timelines or anti-shuttling rule are violated. A person must take further action to obtain a court order dismissing the charges.¹²¹

A person who does not request dismissal prior to or during trial will most likely waive (give up) the right to challenge any resulting conviction.¹²²

In some cases, a person may be able to get around the waiver problem by showing that the failure to raise the issue was due to ineffective assistance by counsel.¹²³ Also, a person who pleads guilty to the charges will not be allowed to challenge any pre-plea violation of the IAD, unless perhaps the person can show that they entered the plea involuntarily or due to incompetent attorney advice.¹²⁴

¹¹⁵ *People v. Christensen* (Ill. 1984) 102 Ill.2d 321, 329 [465 N.E.2d 93].

¹¹⁶ *People v. Reyes* (1979) 98 Cal.App.3d 524, 529-530 [159 Cal.Rptr. 572].

¹¹⁷ *Alabama v. Bozeman* (2001) 533 U.S. 146, 152-155 [121 S.Ct. 2079; 150 L.Ed.2d 188]; but see *People v. Litke* (1980) 112 Cal.App.3d 489, 493 [169 Cal.Rptr. 197] (no violation where person was several times taken back and forth two blocks between a federal facility and the state court, but never was booked into a state facility).

¹¹⁸ *United States v. Pursley* (10th Cir. 2007) 474 F.3d 757, 763-764.

¹¹⁹ *United States v. Black* (9th Cir. 1979) 609 F.2d 1330, 1334; *Reyes v. People* (Col. 2008) 195 P.3d 662, 665-666 (waiver of anti-shuttle provision waives all protection against future transfers during the proceedings); *People v. Oiknine* (1999) 79 Cal.App.4th 21, 26-27 [93 Cal.Rptr.2d 720]; *People v. Williams* (1987) 194 Cal.App.3d 124, 132 [239 Cal.Rptr. 375].

¹²⁰ *United States v. Black* (9th Cir. 1979) 609 F.2d 1330, 1334.

¹²¹ See, e.g., *People v. Rhoden* (1989) 216 Cal.App.3d 1242, 1253-1254 [265 Cal.Rptr. 355] (person waived portion of IAD claim that he did not raise in the trial court).

¹²² *Reed v. Farley* (1994) 512 U.S. 339, 347-350 [114 S.Ct. 2291; 129 L.Ed.2d 277]; *Grant v. United States* (6th Cir. 1996) 72 F.3d 503; *United States v. Eaddy* (6th Cir. 1979) 595 F.2d 341, 346; *People v. Moody* (Col. 1984) 676 P.2d 691, 695; *Drescher v. Superior Court* (1990) 218 Cal.App.3d 1140, 1147-1148 [267 Cal.Rptr. 661].

¹²³ *People v. Waltson* (Col.App. 2007) 167 P.3d 163, 167-168.

¹²⁴ *Hudson v. Moran* (9th Cir. 1985) 760 F.2d 1027, 1030.

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The person must file the request for dismissal in the federal or out-of-state court where the charges are pending, even if they have never actually been transferred to the charging jurisdiction.¹²⁵ For example, a person in a California prison who wants Nevada charges dismissed should ask the Nevada court to make the dismissal order. The federal or out-of-state court will apply the IAD as it has been interpreted by the higher-level courts in that jurisdiction. The court will not be required to follow California court cases interpreting the IAD, although California cases may sometimes provide helpful reasoning supporting the person's position.

There is no standard form for asking a court to dismiss charges under the IAD. A person who wants to get charges dismissed should write and file a motion asking for dismissal of the charges and citing the sections of the IAD that require dismissal. The person should attach copies of all the relevant documents – Form 661 and Form 1665 and, if available, copies of the IAD Forms III and IV that were prepared by California officials. The person should send the original motion and documents to the court and send a copy of the motion and attachments to the prosecutor who filed the charges. The person must attach a proof of service to inform the court that the documents have been served on the prosecutor. The public defender's office where the charges are pending may be able to assist with filing and/or arguing the motion.

If the charges are from the federal government, then the court may dismiss the case either with or without prejudice to re-filing. The court shall consider the seriousness of the offense, the circumstances which led to the dismissal, and the impact of further prosecution on the administration of justice.¹²⁶ It appears that some states require dismissal with prejudice, but that other states may allow re-filing.¹²⁷ Also, dismissal of charges for an IAD violation does not prohibit the federal government or other state from keeping custody and charging the person with new crimes that were not listed in the detainer and arose out of a different set of facts.¹²⁸

If a person incarcerated in CDCR succeeds in getting the charges dismissed, the records office staff should update their Central File to show that the detainer has been removed. If this does not happen in a reasonable amount of time, the person should file a CDCR Form 22 Inmate/Parolee Request for Interview and, if necessary, a CDCR Form 602 Inmate/Parolee Appeal (see Chapter 1).

If the person is still incarcerated in California, and the federal or out-of-state court refuses to dismiss the charges, then the person can be extradited at the end of their term in the state that has custody (see §§ 10.32-10.36). Violations of the IAD cannot stop extradition.¹²⁹ However, when the person is brought to court on the federal or out-of-state case, they can raise an IAD violation as a defense.

¹²⁵ Penal Code § 1389, article V(c).

¹²⁶ 18 U.S.C. App. 2, § 9; *United States v. Kelley* (1st Cir. 2005) 402 F.3d 39, 41; *United States v. McKinney* (8th Cir. 2005) 395 F.3d 837, 840; *United States v. Johnson* (9th Cir. 1999) 196 F.3d 1000, 1004.

¹²⁷ Penal Code § 1389, article V(c); see *Pethel v. McBride* (W.Va. 2006) 219 W.Va. 578, 590 [638 S.E.2d 727] (allowing dismissal without prejudice).

¹²⁸ *United States v. Clark* (7th Circuit 2014) 754 F.3d 401, 408-409; *Morrison v. State* (Ga. 2006) 280 Ga. 222, 225-226 [626 S.E.2d 500].

¹²⁹ *In re Fabricant* (1981) 118 Cal.App.3d 115, 119-121 [173 Cal.Rptr. 245].

10.26 Challenging Denial of a Request to Dismiss Under the IAD

If the court where the charges are pending refuses to dismiss the case, the options for further challenges will depend on the court rules and procedures in the federal district or state where the charges are pending. In some cases, the person might be allowed to file a pre-trial petition for writ of mandate or habeas corpus in the appellate courts for the jurisdiction where the charges are pending. However, a person challenging state charges most likely will not be able to bring a pre-trial federal habeas corpus petition.¹³⁰

If the person's efforts to dismiss the case are unsuccessful and they are convicted of the charges, then issue can most likely be raised during direct appeal of the conviction.

If the IAD violation claim is denied all the way through the direct appeal process, or if a person does not appeal the issue, the options may be limited. The person may be able to file a petition for writ of habeas corpus, especially if there is an argument that any waiver of the IAD was due to ineffective assistance of counsel or an involuntary or unintelligent guilty plea.¹³¹ However, people should be aware that federal courts generally will not grant habeas relief for an IAD violation unless a the person can show that the error was so fundamentally unfair as to amount to an unconstitutional violation of due process.¹³²

10.27 Federal and Out-of-State Detainers for Un-Sentenced Convictions

A person who has been convicted of a federal crime or a crime in another state, but has not yet been sentenced, may be subject to a "conviction detainer." People who have conviction detainers usually can request that the other jurisdiction take action to impose a sentence.

The CDCR provides notice of a conviction detainer on a CDCR Form 1673 Agreement on Detainers - Right to Request Sentencing. A person who wants to request sentencing should fill out CDCR Form 1674 Agreement on Detainer - Notice of Place of Imprisonment and give it to prison staff. By filling out this form, the person will waive the right to personally appear at the sentencing hearing if that is required by the detainer state's law.¹³³

¹³⁰ *Carden v. Montana* (9th Cir. 1980) 626 F.2d 82, 83 (pre-trial habeas relief not available for alleged violation of speedy trial rights); *Neville v. Cavanagh* (7th Cir. 1979) 611 F.2d 673, 675-676 (pre-trial habeas on IAD claim dismissed).

¹³¹ See, e.g., *Pethel v. McBride* (W.Va. 2006) 219 W.Va. 578, 590 [638 S.E.2d 727] (state habeas relief not available for an IAD violation under West Virginia law).

¹³² *Reed v. Farley* (1994) 512 U.S. 339, 347-350 [114 S.Ct. 2291; 129 L.Ed.2d 277]; see also *Pethel v. Ballard* (4th Cir. 2010) 617 F.3d 299, 305 (IAD violation not cognizable on federal habeas review unless due process violated); *Lara v. Johnson* (5th Cir.1998) 141 F.3d 239, 242 (must show exceptional circumstance that violation of the IAD constitutes fundamental defect causing a miscarriage of justice before claim cognizable under federal habeas statutes); *Grant v. United States* (6th Cir. 1996) 72 F.3d 503; *Cross v. Cunningham* (1st Cir. 1996) 87 F.3d 586, 587-588 (claim of an IAD violation not cognizable in habeas action as the IAD provision has nothing to do with securing a fair trial and there was no allegation that violation impaired defense); *Remeta v. Singletary* (11th Cir.1996) 85 F.3d 513, 519 (IAD violations are not cognizable in habeas proceedings absent a showing that the violation prejudiced the rights of the accused by affecting the integrity of the fact-finding process); *Carlson v. Hong* (9th Cir. 1983) 707 F.2d 367, 368 (violations of the IAD's anti-shuttling provision cannot be raised on federal habeas corpus).

¹³³ 15 CCR § 3370.5(e).

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Courts are divided about whether the IAD timelines apply when the detainee is for a case in which there has been a conviction but no sentence has been entered. Most courts, including the California state courts have held the IAD does not apply. However, the Ninth Circuit Court of Appeals concluded that the IAD does apply.¹³⁴ But even if the IAD does apply, it does not give a person a right to appear personally in the other state for sentencing.¹³⁵

If the IAD timeline does not apply, a person may still be able to get the federal or out-of-state court to go ahead with sentencing by filing a motion asserting a federal constitutional Sixth Amendment speedy trial right or Fourteenth Amendment due process right to sentencing within a reasonable time (see §§ 10.9-10.10).¹³⁶ The other state may also have speedy trial or due process laws that apply to sentencing (see, e.g., § 10.11).

A person who has an un-sentenced case in another jurisdiction can also try negotiating with the authorities to dismiss the matter or agree to some other beneficial arrangement (see § 10.7).

10.28 Federal and Out-of-State Detainers for Consecutive Sentences

The options for a person incarcerated in California with an unserved criminal sentence from the federal system or another state will depend on whether the courts have ordered the sentences to run consecutively (one after another) or concurrently (at the same time).

A person incarcerated in California with an unserved federal or out-of-state sentence generally cannot do much about it if the courts have ordered the person to serve the sentences consecutively. The person will have to serve out the California term and then be transferred to serve the federal or out-of-state sentence.

10.29 Federal and Out-of-State Detainers for Concurrent Sentences

A person has more options if the California term is to run concurrently with the out-of-state sentence or if the out-of-state term is to run concurrently with the California term.

When a person receives a California prison sentence that is to be served concurrently with a federal or out-of-state sentence, they can request a transfer to the out-of-state jurisdiction to start concurrent service of the sentences. This is known as a “*Stoliker* request” after the case that established that people in prison have a right to earn credits toward concurrent California sentences while they

¹³⁴ Compare *Tinghitella v. California* (9th Cir. 1983) 718 F.2d 308, 311-312 (the IAD applies to un-sentenced convictions) with *Gilbert v. State* (Ind.App. 2013) 982 N.E. 2d 1087, 1091 (stating that most courts have held that the IAD does not apply to un-sentenced convictions) and *People v. Dial* (2004) 123 Cal.App.4th 1116, 1121 [20 Cal.Rptr.3d 573] (the IAD does not apply to un-sentenced convictions, and equal protection does not require that benefits of Penal Code § 1381 be extended to people in prisons out-of-state awaiting sentencing in California cases).

¹³⁵ *Tinghitella v. California* (9th Cir. 1983) 718 F.2d 308, 312 (applying California rule that person who flees prior to sentencing has no right to be present at sentencing).

¹³⁶ *Tinghitella v. California* (9th Cir. 1983) 718 F.2d 308, 311.

are serving time in another jurisdiction.¹³⁷ Since the federal government and most other states will not automatically credit time served in California toward a sentence in their jurisdiction, a person should be sure to make a *Stoliker* request in order to serve the least amount of time possible on the combined terms.¹³⁸

A person who has concurrent sentences and wants to transfer to another jurisdiction should submit a written *Stoliker* request to the case records office at the prison where they are incarcerated.¹³⁹ The prison staff, are then required to formally notify the other jurisdiction stating that the person is available for transfer.¹⁴⁰

If the California prison officials fail to act, the person can file an administrative appeal (see Chapter 1) and, if necessary, a state court petition for writ of habeas corpus (see Chapter 15) to force the prison officials to comply with the law.¹⁴¹

California authorities must offer to transfer the person to federal or out-of-state authorities for service of the concurrent sentence.¹⁴² If the other jurisdiction takes custody of the person, they will begin to earn credits simultaneously on both the California term and the out-of-state or federal term. If any part of the California sentence remains unserved at the end of the out-of-state or federal term, the person will then be returned to California to finish the California sentence. No formal extradition procedure will be required because California technically never gave up custody, but merely entered into a joint custody arrangement.¹⁴³

In some cases, the federal or out-of-state jurisdiction may respond to the *Stoliker* request by agreeing to allow the person to start earning concurrent credits on the federal or out-of-state case while remaining in a California prison.¹⁴⁴

Unfortunately, the other jurisdiction is not required to take custody of the person or grant credits for concurrent time even after receiving the *Stoliker* request. California cannot compel federal or other states' authorities to take custody of a person.¹⁴⁵

¹³⁷ *In re Stoliker* (1957) 49 Cal.2d 75, 77-78; Penal Code § 2900; see also *People v. Massey* (1961) 196 Cal.App.2d 230, 237-238 [16 Cal.Rptr. 402] (*Stoliker* rule applies where prior conviction is in another state); *People v. Sewell* (1978) 20 Cal.3d 639, 643 [143 Cal.Rptr. 879] (applying *Stoliker* rule to person with indeterminate sentence); *In re Altstatt* (1964) 227 Cal.App.2d 305, 307 [38 Cal.Rptr. 616] (*Stoliker* applies where the California judge does not say specifically whether the cases are to run consecutive or concurrent; the sentences are deemed by law to be concurrent); see DOM § 72040.6.5 and DOM § 72040.10.

¹³⁸ See, e.g., *Spigner v. United States* (9th Cir. 1971) 452 F.2d 1208.

¹³⁹ DOM § 72040.10.1.

¹⁴⁰ *In re Riddle* (1966) 240 Cal.App.2d 707, 709 [49 Cal.Rptr. 919].

¹⁴¹ *People v. Antonio* (2017) 10 Cal.App.5th 1064 [216 Cal.Rptr.3d 523]; see also *In re Satterfield* (1966) 64 Cal.2d 419 [50 Cal.Rptr. 284] (reviewing *Stoliker* request issue).

¹⁴² Penal Code § 2900(b)(2); *In re Stoliker* (1957) 49 Cal.2d 75, 76.

¹⁴³ *In re Patterson* (1966) 64 Cal.2d 357, 362-363 [49 Cal.Rptr. 801].

¹⁴⁴ Penal Code § 2900(b)(2).

¹⁴⁵ *People v. Superior Court (Lopez)* (1982) 130 Cal.App.3d 776, 785 [182 Cal.Rptr. 132]; *In re Tomlin* (1966) 241 Cal.App.2d 668, 669 [50 Cal.Rptr. 805]; see also *In re Patterson* (1966) 64 Cal.2d 357, 364-365 [49 Cal.Rptr. 801] and *Isreal v. Marshall* (9th Cir. 1997) 125 F.3d 837, 839.

If the out-of-state authorities refuse to take custody, then the person most likely will have to wait until the end of the California term, at which point those authorities can move to extradite the person to serve the out-of-state sentence.¹⁴⁶ Trying to negotiate an unserved out-of-state sentence is usually useless because the prosecutors and courts often have little or no authority to modify or dismiss a sentence. There are, however, some possible options for obtaining a transfer or concurrent credits. One possibility is that the other state may have its own laws that would allow the person to challenge the refusal or to get credit by filing an action in the other state's courts.¹⁴⁷ Also, federal law gives people protection when a California sentence is imposed concurrent to a previously imposed federal term. Thus, some federal courts have granted habeas petitions and ordered that people in prison get credit for the time during which federal prison authorities have erroneously refused to accept custody so the person could serve their federal term concurrent to state term.¹⁴⁸ Finally, if the person entered a plea bargain to the California term with the promise that it would run concurrent to the federal or out-of-state term, then a California court may be willing to order enforcement of the plea bargain in some way, such as by reducing the length of the California term.¹⁴⁹

10.30 Out-of-State Probation and Parole Violation Detainers

Any person who was on probation or parole from another state, and then got a criminal conviction in California, will most likely be subject to a detainer lodged by the other state. Unfortunately, a person with an out-of-state probation or parole violation detainer has few options for trying to resolve the detainer. There is no constitutional due process or speedy trial right to a probation or parole revocation hearing before the end of the current prison term.¹⁵⁰ The IAD does not apply to probation and parole violation detainers.¹⁵¹ Thus, a person with a detainer based on an out-of-state probation or parole violation usually will end up being returned to the other state for further proceedings when the California term ends.

There are a few possibilities. Some states may have laws that give people who are incarcerated in other states a way to resolve a parole or probation violation.¹⁵² For example, California has procedures for conducting revocation proceedings for people on parole in California who are in

¹⁴⁶ *People v. Superior Court (Lopez)* (1982) 130 Cal.App.3d 776, 784-785 [182 Cal.Rptr. 132].

¹⁴⁷ See, e.g., *Chalifoux v. Commissioner of Correction* (Mass. 1978) 375 Mass. 424, 429 [377 N.E.2d 923] (finding that MA unfairly refused to accept person or grant credit for time spent in California); but see *Aycox v. Little* (10th Cir. 1999) 196 F.3d 1174, 1176-1180 (NM not obligated to honor *Stoliker* request; refusal to accept custody did not violate federal law).

¹⁴⁸ *Cozine v. Crabtree* (D.C. Or. 1998) 15 F.Supp.2d 997,1010; see also *McCarthy v. Doe* (2d Cir. 1998) 146 F.3d 118, 121-122; *United States v. Drake* (9th Cir. 1995) 49 F.3d 1438; *Kayfez v. Gasele* (7th Cir. 1993) 993 F.2d 1288; *United States v. Benefield* (1st Cir. 1991) 942 F.2d 60; see also *Jake v. Herschberger* (7th Cir.1999) 173 F.3d 1059, 1066 (under prior law, no right to benefit from state concurrent sentences when federal sentence imposed prior to Nov. 1, 1987).

¹⁴⁹ *Ward v. Brown* (E.D. Cal. 2012) 891 F.Supp.2d 1149, 1159.

¹⁵⁰ *Moody v. Daggett* (1976) 429 U.S. 78, 86 [97 S.Ct. 274; 50 L.Ed.2d 236]; see also *Spotted Bear v. McCall* (9th Cir. 1980) 648 F.2d 546, 547.

¹⁵¹ *Carchman v. Nash* (1985) 473 U.S. 716, 726 [105 S.Ct. 3401; 87 L.Ed.2d 516] (probation detainer); *Hopper v. United States Parole Commission* (9th Cir. 1983) 702 F.2d 842, 846 (parole detainer).

¹⁵² People in prison, especially those with a parole violation warrant, should consider the possibility that the other state has procedures for resolving the detainer.

custody in other states (see § 11.31). The laws that apply in a particular case will be those of the state that has placed the detainer.

People with probation or parole violation detainers from other states should also consider the possibility of trying to negotiate with officials from the other state to get the charges dismissed or resolved. (See discussion in § 10.7)

10.31 Federal Probation and Parole Violation Detainers

People incarcerated in California prisons facing detainers based on federal probation or parole violations are in a similar position as people facing probation or parole violation detainers from other states (see § 10.30). There is no constitutional right to a speedy hearing and the IAD does not apply. Thus, there is no way for the federal government to resolve a federal probation violation warrant until after the person has served all of their California sentence.¹⁵³

However, there are some rules governing federal parole warrants against people incarcerated in state prisons.¹⁵⁴ A regional commissioner of the United States Parole Commission (the agency that supervises people on federal parole) must review the warrant within 180 days after receiving notice of the person's location. The person is entitled to be notified of the review date and may submit written comments. The person may request that the federal district court appoint counsel to assist in preparing the comments.¹⁵⁵

Upon review, the regional commissioner can: (1) withdraw the detainer and either close the parole case or order that parole will be reinstated when the person is released from California custody; (2) order a revocation hearing to be held at the state prison; or (3) let the detainer stand. If the detainer is not resolved, the commissioner generally will review it every few years. If the detainer continues to remain in place, then the person will be returned to federal custody for a revocation hearing after serving out the California sentence.¹⁵⁶

EXTRADITION

10.32 Overview of Extradition (Involuntary Return to Another State)

As explained in §§ 10.28-10.29, people incarcerated in California prisons who reach the end of their sentences but still have a detainer from another state usually will be sent to the other state for further proceedings on the out-of-state case. Extradition is the term for how such a transfer of custody takes place.¹⁵⁷

¹⁵³ *United States v. Garrett* (9th Cir 2001) 253 F.3d 443, 450; *United States v. Bartholdi* (9th Cir. 1972) 453 F.2d 1225, 1226.

¹⁵⁴ 28 C.F.R. § 2.47 et seq.

¹⁵⁵ 28 C.F.R. § 2.47(a)(2); 28 C.F.R. § 2.48(b).

¹⁵⁶ 28 C.F.R. § 2.47(c).

¹⁵⁷ Note that people who were being supervised on parole or probation in California through an agreement between California and another jurisdiction and are facing probation or parole violation charges in that other jurisdiction are governed by the Uniform Act for Out-of-State Probationer or Parolee Supervision, which is discussed in § 10.37.

§ 10.33

The Extradition Clause of the U.S. Constitution, federal legislation, and the Uniform Criminal Extradition Act (UCEA) give states the authority to demand that other states turn over fugitives from justice.¹⁵⁸ Extradition is a summary and mandatory proceeding that enables a state, to bring a person to its state for trial as swiftly as possible.¹⁵⁹ Nonetheless, people facing extradition do have some legal rights. Also, it may sometimes be possible for the person, through a lawyer, to negotiate with the other state to drop the matter or to agree to a lenient sentence in exchange for voluntary return. If it appears that extradition is inevitable, a person should consider whether it is in their best interests to waive formal extradition proceedings (see § 10.34).

A more detailed discussion of the law of extradition can be found in *California Criminal Law: Practice and Procedure*, published and updated annually by Continuing Education of the Bar, 2100 Franklin #500, Oakland, CA 94612.

10.33 Summary of Extradition Procedure

Upon reaching the release date for the California term, a person with a detainer from another state usually will be arrested and taken into custody by the local California county sheriff on the basis of the detainer or “fugitive warrant.”¹⁶⁰

Once the person is in local custody, he or she should be taken before a judge “with all practicable speed.”¹⁶¹ The judge should inform the person of the reason for the arrest, the right to counsel, and the right to waive extradition.¹⁶² So long as there is an out-of-state charge pending and the person being charged, there are no other defenses to extradition. However, if the person in prison denies being the person charged, the judge shall order a hearing to be held within 10 days to determine whether there is probable cause to believe that the person in prison is the wanted person and has been charged with or convicted of a crime in the other state. The court may decide the issue based on certified copies of legal documents.¹⁶³

If these criteria are met, the person will be held in custody on the warrant to give the demanding state an opportunity to make a formal extradition request. A person held pending issuance of a governor’s warrant can be released on bail unless the crime charged in the other state is punishable by death or life imprisonment or the person is wanted because of an escape or a violation of parole.¹⁶⁴ However, courts are reluctant to release alleged fugitives on bail, especially if the person has just served

¹⁵⁸ See U.S. Constitution, Article IV, § 2(2); 18 U.S.C. § 3182. Penal Code §§ 1548-1556.2; *Puerto Rico v. Branstad* (1987) 483 U.S. 219, 228-229 [107 S.Ct. 2802; 97 L.Ed.2d 187].

¹⁵⁹ *Michigan v. Doran* (1978) 439 U.S. 282, 287-288 [99 S.Ct. 530; 58 L.Ed.2d 521].

¹⁶⁰ Penal Code §§ 1551-1551.1.

¹⁶¹ Penal Code § 1551.1.

¹⁶² Penal Code § 1551.2; Penal Code § 1555.1.

¹⁶³ Penal Code § 1551.2.

¹⁶⁴ Penal Code §§ 1552-1552.1.

a California prison term. People who do obtain release on bail may benefit because many states will not give sentence credits for time spent in jail prior to extradition.¹⁶⁵

A person can be held in the county jail for a period not to exceed 30 days following the probable cause hearing.¹⁶⁶ The court has discretion to re-commit the accused for up to 60 additional days if the California governor's extradition warrant has not been issued by the end of the initial 30-day period.¹⁶⁷ If the initial commitment order expires without issuance of an extradition warrant, the person can ask to be released. However, the requesting state can simply file a new fugitive warrant to hold the person in custody or local officials may re-arrest the defendant after the extradition warrant finally does get issued.¹⁶⁸

When a formal request for extradition is received from the demanding state, the papers will be forwarded to the California governor, who has the authority to issue an extradition warrant requiring delivery of the person to officials of the demanding state.¹⁶⁹ The California governor can opt to investigate an extradition request and hold a hearing before issuing an extradition warrant. In an extraordinary case, the governor may refuse to issue a warrant. A person who can show that extradition would be unjust should send a letter to the governor's office immediately after the probable cause hearing, asking the governor to investigate the matter and refuse to issue the warrant. Unfortunately, even if the governor refuses to issue an extradition warrant, the demanding state can ask a federal court to order extradition.¹⁷⁰

If the California governor does issue an extradition warrant, the person must again be taken before the local California court for a hearing. The court is required to inform the fugitive of the demand for extradition, the crime or escape charge, the right to counsel, and the right to challenge the warrant by filing a habeas corpus petition.¹⁷¹ At the hearing, the person should inform the judge if they want to challenge the extradition warrant. At this point, release on bail is essentially prohibited.¹⁷²

If the person does not challenge the extradition, or the challenge is unsuccessful, the court will issue an order allowing the demanding state to take custody of the person. The demanding state should take custody within 30 days. If the person is not transferred within 30 days, they may be released; however, release is not mandatory.¹⁷³

¹⁶⁵ *In re Watson* (1977) 19 Cal.3d 646, 654 [139 Cal.Rptr. 609] (California grants pre-sentence credit for time prior to extradition); see also *People v. Underwood* (1984) 162 Cal.App.3d 420, 424-425 [208 Cal.Rptr. 623] (where extradition was for unserved California term from which person escaped, no credit given for time spent fighting extradition).

¹⁶⁶ Penal Code § 1552.

¹⁶⁷ Penal Code § 1552.2.

¹⁶⁸ *In re McBride* (1953) 115 Cal.App.2d 538, 542-543 [254 P.2d 117]; see also *In re Russell* (1974) 12 Cal.3d 229, 233-234 [115 Cal.Rptr. 511].

¹⁶⁹ Penal Code §§ 1549.1-1549.3

¹⁷⁰ *Puerto Rico v. Branstad* (1987) 483 U.S. 219, 228-230 [107 S.Ct. 2802; 97 L.Ed.2d 187].

¹⁷¹ Penal Code § 1550.1.

¹⁷² Penal Code § 1550.1; *People v. Superior Court (Ruiz)* (1986) 187 Cal.App.3d 686, 692-693 [234 Cal.Rptr. 214].

¹⁷³ 18 U.S.C. § 3182; Penal Code § 1550.3.

10.34 Waiver of Extradition

There are several reasons why a person facing extradition may want to waive (give up) their rights and agree to be taken into custody by the demanding state. There are very few situations in which a person will be able to avoid extradition and time spent in a California jail awaiting extradition might not be credited against any sentence that is later imposed.

A person who wants to waive extradition must be informed of all rights under the extradition laws and make the waiver in writing in front of a judge.¹⁷⁴ Once a person enters a waiver, the demanding state can take custody. A person who has waived extradition may be released on bail if both the local district attorney and the demanding state agree to it. Also, if the demanding state agrees, a court can release a person to allow voluntary return to the demanding state.¹⁷⁵

Some people may have already agreed to waive extradition if they were on conditional release such as bail, probation or parole in the demanding state before going to prison in California. Such waivers will be deemed to remain in effect so long as a court finds that: (1) the alleged violation of the conditional release occurred within the last five years, (2) the conditional release was for an offense that was or is punishable by a sentence of more than one year, and (3) the waiver was entered before the person was conditionally released.¹⁷⁶

If there is a valid waiver of extradition, the person must be kept in custody until they are delivered to the authorities for the demanding state, unless both the district attorney and the demanding state agree to release on bail or other conditional release.¹⁷⁷

A person who wants to challenge an order finding that extradition has been waived must be allowed a reasonable amount of time to bring a petition for writ of habeas corpus.¹⁷⁸

10.35 Habeas Corpus Challenges to Extradition

A person has the right to file a habeas corpus petition in the California state courts challenging a court's extradition order. However, the issues that a court can consider in such a petition are extremely limited. A person may challenge a court's determination that a prior waiver of extradition is valid and remains in effect.¹⁷⁹ Otherwise, the only issues that can be raised are: (1) whether the extradition documents are complete and authentic, (2) whether the petitioner has been charged with or convicted of a crime in a demanding state, (3) whether the petitioner is the person named in the extradition request, and (4) whether the petitioner is a fugitive or otherwise extraditable. These issues

¹⁷⁴ Penal Code § 1555.1.

¹⁷⁵ Penal Code § 1555.1.

¹⁷⁶ Penal Code § 1555.2(a)-(b).

¹⁷⁷ Penal Code § 1555.2(c)-(d).

¹⁷⁸ Penal Code § 1555.2(e).

¹⁷⁹ Penal Code § 1552.2(e).

have been characterized as “historic facts” that are readily verifiable.¹⁸⁰ Thus, only the rarest cases will present arguable habeas corpus issues.

Because of these strict limits, many issues cannot be raised successfully on habeas corpus. Claims that cannot be used to block extradition include arguments that the accused person is innocent of the charged crime,¹⁸¹ that there are valid defenses to the charge,¹⁸² that the demanding state has not yet made a probable cause finding in the case,¹⁸³ that constitutional rights such as those to a speedy trial or to be free from double jeopardy have been violated,¹⁸⁴ that prison conditions in the demanding state are unconstitutional,¹⁸⁵ that the IAD has been violated,¹⁸⁶ or that the other state improperly refused to take custody after a *Stoliker* request.¹⁸⁷

If the person wants to file a habeas corpus petition, the court must allow a “reasonable time” for the person to do so.¹⁸⁸ The person should ask the court to stay (delay) extradition until the petition is filed and decided. The petition must be served on both the district attorney of the county in which the extradition proceedings are pending and an official of the demanding state.¹⁸⁹ If the petition is denied, but the court finds there is probable cause to allow the person to raise the issues in the state court of appeal or California Supreme Court, then the local court must grant a reasonable time for the person to file another petition in the higher courts.¹⁹⁰

If a habeas corpus petition is granted, the person must be released from custody. However, the demanding state can then file a new extradition proceeding for the same charges.¹⁹¹

¹⁸⁰ *Michigan v. Doran* (1978) 439 U.S. 282, 289 [99 S.Ct. 530; 58 L.Ed.2d 521]; *New Mexico ex rel. Ortiz v. Reed* (1998) 524 U.S. 151, 152 [118 S.Ct. 1860; 141 L.Ed.2d 131]; *California v. Superior Court (Smolin)* (1987) 482 U.S. 400, 408 [107 S.Ct. 2433; 96 L.Ed.2d 332]; *In re Walton* (2002) 99 Cal.App.4th 934, 945 [122 Cal.Rptr.2d 87].

¹⁸¹ Penal Code § 1553.2; *California v. Superior Court (Smolin)* (1987) 482 U.S. 400, 407 [107 S.Ct. 2433; 96 L.Ed.2d 332].

¹⁸² *Biddinger v. Commissioner of Police* (1917) 245 U.S. 128, 135 [38 S.Ct. 41; 62 L.Ed. 193].

¹⁸³ *In re Golden* (1977) 65 Cal.App.3d 789, 975-976 [135 Cal.Rptr. 512].

¹⁸⁴ *Price v. Pitchess* (9th Cir. 1977) 556 F.2d 926, 928-929.

¹⁸⁵ *Pacileo v. Walker* (1980) 449 U.S. 86, 87-88 [101 S.Ct. 308; 66 L.Ed.2d 304] (sending state does not have authority to inquire into prison conditions in demanding state); *Brown v. Sheriff of Wayne County* (1982) 415 Mich. 658 [330 N.W.2d 335, 343-344] (same even when federal courts have found that prison conditions in the demanding state are cruel and unusual punishment).

¹⁸⁶ *In re Fabricant* (1981) 118 Cal.App.3d 115, 120-121 [173 Cal.Rptr. 245].

¹⁸⁷ *People v. Superior Court (Lopez)* (1982) 130 Cal.App.3d 776, 784-785 [182 Cal.Rptr. 132].

¹⁸⁸ Penal Code § 1550.1; Penal Code § 1555.2(e).

¹⁸⁹ Penal Code § 1550.1.

¹⁹⁰ Penal Code § 1550.1; Penal Code § 1555.2(e).

¹⁹¹ *In re Russell* (1974) 12 Cal.3d 229, 232 [115 Cal.Rptr. 511]; *State ex rel. Moore v. Conrad* (W. Va. 1988) 179 W.Va. 577, 579 [371 S.E.2d 74].

10.36 Other Remedies for Improper Extradition

After return to the demanding state, a person can be prosecuted even if their extradition rights were violated. Violation of the extradition laws does not invalidate a subsequent conviction.¹⁹²

One possible means for challenging an unlawful extradition is a federal civil rights (§ 1983) lawsuit. However, such a lawsuit cannot lead to a reversal of the conviction, and it is unlikely that a person who is convicted of the crime for which they were unlawfully extradited will be awarded any significant amount of money damages.¹⁹³ (See Chapter 17 for more discussion of § 1983 cases.)

In addition, willfully failing to properly arraign a fugitive on a governor's warrant is a misdemeanor under California law.¹⁹⁴ In theory, this provides some protection from illegal extradition.

10.37 Return Under the Uniform Act on Out-of-State Probationer or Parolee Supervision

Sometimes people on probation or parole from other states are transferred to supervision in California under the Uniform Act on Out-of-State Probationer or Parolee Supervision and the Interstate Compact for Adult Offender Supervision.¹⁹⁵ In such cases, the person on probation or parole may become wanted by the other state if there is a probation or parole violation charge. Under these laws, officials of the state that released the person on probation or parole may enter California at any time to take over custody of them. Formal extradition procedures are not required.¹⁹⁶

California law does give a person on probation or parole some procedural protections before another state can take custody. The person on probation or parole must be provided with a lawyer. A court hearing must be held to determine whether there is probable cause to believe that the person was released to California under the compact, that the person is the person on probation or parole wanted by the other state, and that the other state has requested the person's return. The proof may be in the form of certified copies of probation and parole documents.¹⁹⁷ If the person wants to challenge the court's ruling, the court must allow a reasonable amount of time for the person to file a state court petition for writ of habeas corpus (see Chapter 15).¹⁹⁸

¹⁹² *Frisbie v. Collins* (1952) 342 U.S. 519, 522 [72 S.Ct. 509; 96 L.Ed. 541], reaffirming *Ker v. Illinois* (1886) 119 U.S. 436, 444 [7 S.Ct. 225; 30 L.Ed. 421]; *Myers v. Rhay* (9th Cir. 1978) 577 F.2d 504, 510.

¹⁹³ *Draper v. Coombs* (9th Cir. 1986) 792 F.2d 915, 919-922; *Weilburg v. Shapiro* (9th Cir. 2007) 488 F.3d 1202, 1205-1206 (*Heck* doctrine does not bar § 1983 suit for unlawful extradition); but see *Barton v. Norrod* (6th Cir. 1997) 106 F.3d 1289, 1293-1294 (finding no cause of action for violation of extradition rights, but noting that other jurisdictions allowed such claims).

¹⁹⁴ Penal Code § 1550.2.

¹⁹⁵ Penal Code § 11175-§ 11189; see *Wofford v. Superior Court* (2014) 230 Cal.App.4th 1023 [179 Cal.Rptr.3d 243].

¹⁹⁶ Penal Code § 11177(3).

¹⁹⁷ Penal Code § 11177.1(a); *Ramirez v. Superior Court* (2017) 15 Cal.App.5th 643 [223 Cal.Rptr.3d 536] (person on probation in Arizona under supervision in California entitled to probable cause hearing before return to Arizona on probation violation charge).

¹⁹⁸ Penal Code § 11177.1(b); see also *In re Albright* (1982) 129 Cal.App.3d 504, 512 [181 Cal.Rptr. 84].

**INMATE NOTIFICATION AND AGENCY
ACKNOWLEDGEMENT OF DETAINER RECEIPT**

CDC 661 (Rev 10/00)

DISTRIBUTION:ORIGINAL - AGENCY
COPY - INMATE
COPY - C-FILE

INMATE NOTIFICATION OF DETAINER RECEIPT			
INMATE'S NAME	AKA	CDC NUMBER	TODAY'S DATE
FACILITY NAME AND ADDRESS			

On _____ a detainer was filed against you. This detainer indicates that you are wanted by _____

on a charge of _____ based on Warrant Number _____

YOU ARE HEREBY NOTIFIED (refer only to item(s) marked):

- ☐ You may request disposition of untried charges in accordance with Penal Code (PC) Section 1381.
- ☐ You may request disposition of probation in accordance with PC Section 1203.2a. (for California Counties only.)
- ☐ You may request disposition of untried charges in accordance with PC Section 1389. (See Agreement on Detainer Form I, CDC 1664 attached.)
- ☐ You may request to be returned to this jurisdiction for concurrent service of terms In re Stolyer.

If you are wanted by those authorities to complete service of an unexpired commitment in that jurisdiction and if your present California commitment has been ordered to run concurrently with that previous commitment, you may be eligible for transfer to that jurisdiction under In re Stolyer, 49 Cal. 2d 75.

If you believe that you meet the above criteria, you may make a request to the Director, in writing and through the institution records office, asking that you be made available to those authorities so that your terms may run concurrent. If the Director grants your request, a letter will be sent to those authorities notifying them of your present status and of the fact that you are available to them.

Those authorities may then either: (1) request that you be transferred to them in which case you will be transferred, your sentence will run concurrently, and a detainer will be placed against you by California for your return should you complete their sentence first; (2) designate this institution as the place for service of your commitment to them in which case you will acquire the benefit of concurrent terms; or (3) deny your request in which case your only recourse will be in the courts of that jurisdiction.

- ☐ Pursuant to PC Section 11177.1, Uniform Act for Out-to-State Probationer or Parolee Supervision, you may waive a court appearance. See the attached CDC Form 1899, Waiver of Court Appearance - Return to Sending State.

- ☐ None of the above are applicable in this case.

If the subject inmate wishes to exercise any of the above marked alternatives, he/she should direct a written request to his/her institution records office.

RECEIPT ACKNOWLEDGED (INMATE'S SIGNATURE)	CDC NUMBER	DATE	AUTHORIZED STAFF'S SIGNATURE
---	------------	------	------------------------------

ACKNOWLEDGEMENT TO AGENCY

TO (AGENCY'S NAME AND ADDRESS):

This is to acknowledge receipt of your detainer on the above identified subject. Notations have been entered into our records that the subject is Wanted by your agency. Should this detainer not be recalled, we will notify your office in advance of the subject's scheduled release date of: _____

Please note: the scheduled release date is subject to change.

Questions regarding this notification and acknowledgement may be directed to:

INSTITUTION NAME
ADDRESS
CONTACT PERSON
TELEPHONE NUMBER

--

TO THE DISTRICT ATTORNEY, _____ COUNTY, State of California:

Please take notice that I, _____, Inmate # _____
(PRINT NAME IN FULL)

of _____, was convicted of the crime of _____
(NAME OF FACILITY WHERE INCARCERATED)

in _____ County, _____, and was sentenced by said
(STATE)

on or about _____, 20 _____ to a term of _____

with a Tentative Release Date / Minimum Eligible Parole Date of _____.

I have reason to believe that the following criminal action is now pending against me in _____ County.

CHARGES: _____ WARRANT #: _____

COURT (Location): _____ ARRESTING AGENCY: _____

I HEREBY DEMAND A HEARING AND TRIAL OF SAID CRIMINAL ACTION AS PRESCRIBED BY SECTION 1381 OF THE CALIFORNIA PENAL CODE.

DATE OF BIRTH	SEX	RACE	HEIGHT	WEIGHT	HAIR COLOR	EYE COLOR
---------------	-----	------	--------	--------	------------	-----------

FACILITY NAME AND ADDRESS WHERE INCARCERATED

OTHER NAMES (Aliases) USED:

I CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

INMATE'S SIGNATURE

DATE

CIN NUMBER:

THIS PORTION IS TO BE DETACHED BY THE DISTRICT ATTORNEY'S OFFICE
AND RETURNED TO THE CASE RECORDS OFFICE OF THE FACILITY WHERE INMATE IS INCARCERATED.

I, _____ District Attorney of
the County of _____, State of California, do hereby acknowledge receipt
of NOTICE AND DEMAND FOR TRIAL, dated _____, by _____.

Inmate _____, of _____.

DISTRICT ATTORNEY

STATE OF CALIFORNIA, COUNTY OF

DATE

RECEIPT TO BE RETURNED TO: CASE RECORDS OFFICE

NAME OF FACILITY: _____

ADDRESS: _____

Cover Memo — Motion to Dismiss

CDC 1006 (10/00)

TO THE JUDGE OF THE _____ COURT _____ DAY OF _____ 20 _____

COUNTY OF _____

CRIMINAL NUMBER _____

CITY OF _____

COUNTY OF _____

THE STATE OF CALIFORNIA

IN RE: PEOPLE VS _____

I am enclosing herewith, a motion, affidavit, and form or order; in connection with the above entitled proceedings, pending in your court. These papers disclose my compliance with Section 1381 P.C., and that I should be entitled to a dismissal.

I have no attorney who could file these papers for me or appear in your Court. I am, therefore, asking your indulgence in accepting these papers from me direct, and I wish you would file them, and have them presented to you in the proper manner, in order that you may make disposition of this case.

Copies of the above mentioned papers have been forwarded to the District Attorney.

May I further ask you to have your Clerk forward a certified copy of the dismissal to the Warden/Superintendent.

Respectfully submitted,

CDC NUMBER

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF

VS.

DEFENDANT

CRIMINAL NO. _____
Affidavit in Support of Motion
to Dismiss Pending Charges

STATE OF CALIFORNIA

COUNTY OF _____

_____, being first duly sworn, deposes and says:

That (s)he is the defendant herein; that on or about _____, 20____, there was a hold order placed against him/her with the California Department of Corrections, by the _____ of _____ California, stating that there were criminal charges pending against the defendant in _____ County, California.

That on _____, this defendant did notify in writing the District Attorney of the County of _____, of his/her demand for hearing and trial on the said charges pending and on file in said county; that this defendant has the written acknowledgment of the said written demand, and it has been made a part of the motion in this proceeding.

That this defendant has complied with the requirements as set forth by the statutes of California in his/her demand for trial, and submits this affidavit in support of his/her motion to dismiss the said charges pending, resulting in the hold order being placed against him/her as above described.

I hereby certify (or declare) under penalty
of perjury that the foregoing is true and
correct.

Dated: This _____ day of _____, 20____.

MOTION TO DISMISS CRIMINAL CHARGES PENDING

CDC 669 (3/92)

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF

VS.

CR.NO.:
WARRANT NO.:

DEFENDANT

Comes now the defendant herein, and moves the court that an order be made, dismissing any and all charges now pending against him/her in said court, upon the ground that the defendant has heretofore notified the

District Attorney of _____ County, California, of his/her demand for trial on any and all charges now pending in said court against the defendant, as provided for in Section 1381, Penal Code of California, which demand so served upon said District Attorney, reads as follows: (a copy of the original being attached hereto, and made a part hereof, with the proof of service of same.)

NOTE: See printed form of Demand for Trial, and Receipt from District Attorney attached hereto.

More than ninety days have elapsed since the service of said demand for trial and no proceedings have been had to bring said cause to trial;

Therefore, the defendant prays that an order be made dismissing said charges and proceeding, and a notice of the same be filed with the Warden of this institution.

This motion will be supported by the defendant's affidavit attached hereto and made a part hereof.

Defendant in Propria Persona

Box _____

(Institution)

ORDER OF DISMISSAL - PENAL CODE 1381
CDC 670 (3/92)

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF

VS.

DEFENDANT

CR.NO.:
WARRANT NO.:

DIV.:

GOOD CAUSE appearing therefore, and it appearing of record that demand for trial was served upon the District Attorney of this county, and affidavits and motion for dismissal were filed herein in accordance with the law so providing; it is therefore

ORDERED, ADJUDGED, AND DECREED that the complaint and action on file herein against the

defendant (_____) CDC

_____)

herein named be and the same is hereby dismissed, and the warrant issued thereon is recalled and declared void.

DATE THIS _____ day of _____ 19 _____.

Judge of the said Court

ATTEST:

Clerk of the said Court

(Seal)

Please return copy of this order to the Warden

Institution

People of the State of California,

Plaintiff

vs

**REQUEST FOR DISPOSITION
OF PROBATION,
WAIVER OF APPEARANCE AND
RIGHT TO ATTORNEY
(P.C. 1203.2a)**

Defendant

Superior Court Case No.

Section 1203.2a requires that the probation officer notify the Court within 30 days after being notified of the defendant's commitment. Failure to do so will deprive the court of jurisdiction to act in any case in which the defendant is on probation.

☐ TO: The Superior Court of the State of California, in and for the County
of _____

☐ TO: Probation Officer, County of _____

1. **PLEASE TAKE NOTICE** that I was released on Probation by the Superior Court of the State of California
in and for the County of _____,
on or about the _____ day of _____, 20_____,
following a conviction of violation of section(s) _____, a felony.

2. **(Please PRINT First, Middle and Last names):**

My full true name is: _____

and my true Date of Birth is _____. I have also been known by, or have used the

following names _____.

3. In accordance with the provisions of California Penal Code 1203.2a, this is to notify you of my present imprisonment and to request the Court to:

☐ a. Make disposition of my probation as required by law in the event I was previously granted probation and imposition of my sentence was suspended, **OR**

☐ b. Execute sentence at this time in the event a sentence was previously imposed and execution thereof suspended.

4. **I am aware** that I am entitled to be represented by an attorney at any and all stages of these proceedings and further that counsel will be furnished at government expense if I am indigent. I understand that evidence in aggravation or mitigation of my crime may be considered at this hearing. I also understand that I have the right to be personally present at such hearing.

5. I further understand that once the court has been notified of my confinement, it has 30 days in which to make disposition of my case under subparagraph 3.a. above, and 60 days to make disposition of my case under subparagraph 3.b above.

CONTINUED ON REVERSE

**REQUEST FOR DISPOSITION OF PROBATION, WAIVER OF APPEARANCE
AND RIGHT TO ATTORNEY (P.C. 1203.2a)
CDCR 616 (Rev. 09/06)**

6. Understanding my rights I DO HEREBY:

- ☐ a. Waive and give up my right to be represented by an attorney;
☐ YES (Initials): _____ ☐ NO (Initials): _____
- ☐ b. Waive and give up my right to be personally present at these proceedings;
☐ YES (Initials): _____ ☐ NO (Initials): _____

7. I hereby certify, under penalty of perjury, that the foregoing is true and correct.

(PRINT COMPLETE MAILING ADDRESS OF INSTITUTION WHERE THIS IS BEING EXECUTED)

DEFENDANT'S SIGNATURE

DATE

CDC NUMBER

(Pursuant to California Penal Code 1203.2a, the defendant's request must be signed in the presence of the Warden of the prison in which the defendant is confined, or the duly authorized representative of the Warden.)

ATTESTATION:

I, (Warden's printed first, middle and last name) _____,

certify that I am the (Warden)(duly authorized representative the Warden)(delete those that do not apply) and

ATTEST that (defendant's printed name) _____ made
and

signed this request in my presence and that he/she states that he/she wishes the Court to execute sentence, or make
disposition of his/her probation as required by law in his/her absence and without his/her being represented by an attorney

at law in the case in which he/she was released on probation.

SIGNATURE IN FULL

DATE

OFFICIAL TITLE

The following information is furnished to assist in the processing of the defendant's request:

- A. The defendant's expected date of release from his/her current term of confinement is currently
set at _____.
- B. (If known) The date of *commission* of the crime(s) for which the defendant is currently undergoing sentence
is _____.

FORM I
AGREEMENT ON DETAINERS

In duplicate. One copy of this form, signed by the prisoner and the warden should be retained by the warden. One copy, signed by the warden should be retained by the prisoner.

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

Inmate _____ No. _____ Inst. _____

Pursuant to the Agreement on Detainers, you are hereby informed that the following are the untried indictments, informations, or complaints against you concerning which the undersigned has knowledge, and the source and contents of each.

You are hereby further advised that by the provisions of said Agreement 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 Agreement, after you have caused to be delivered to said prosecuting officer and said court written notice of the place of your imprisonment and your said request, together with a certificate of the custodial authority as more fully set forth in said Agreement. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

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 detainers 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 Agreement on Detainers and a further consent voluntarily to be 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.

You are also advised that under provisions of said Agreement the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may institute proceedings to obtain a final disposition thereof. In such event, you

may oppose the request that you be delivered to such prosecuting officer or court. 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 statutorily entitled to the procedural protections provided in state extradition laws.

Dated: _____

Warden

CUSTODIAL AUTHORITY

Name: _____

Institution: _____

Address: _____

City/State: _____

Telephone No.: _____

RECEIVED

DATE: _____

INMATE _____ NO. _____

WITNESS: _____

Signature

Date: _____

Name and Title

FORM II
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 detainers 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 Warden. Signed copies must be sent to the Agreement Administrator of the sending and receiving state, the prosecuting official of the jurisdiction which placed the detainer, 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 PLACEMENT OF IMPRISONMENT AND REQUEST FOR
DISPOSITION OF INDICTMENTS, INFORMATIONS OR COMPLAINTS**

TO: _____ Prosecuting Officer, _____
(Jurisdiction)
_____, Court _____
(Jurisdiction)

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

You are hereby notified that the undersigned is now imprisoned in

_____ at _____
(Institution) (City and State)

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

Failure to take action in accordance with the Agreement on Detainers, to which your state is committed by law, will result in the invalidation of the 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 detainers have been lodged against me from your state. I also agree that this request shall be deemed to be my waiver of extradition with respect to any charge or proceeding contemplated hereby or included herein, and a waiver of extradition to your state to serve any sentence there imposed upon me, after 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 Agreement on Detainers and a further consent voluntarily 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 the proper agency, court, or officer and return this form to sender.

The required Certificate of Inmate Status and Offer of Temporary Custody are attached.

INMATE'S Printed Name and CDC Number	INMATE'S Signature	Date Signed
WITNESS' Printed Name and Title	WITNESS' Signature	Date Signed