

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 721

H. P. 531

House of Representatives, February, 1971

Referred to Committee on Judiciary. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Lewin of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Creating the Interstate Compact on Detainers.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 34, c. 76, additional. Title 34 of the Revised Statutes is amended by adding a new chapter 76 to read as follows:

CHAPTER 76
INTERSTATE COMPACT ON DETAINERS
SUBCHAPTER I
AGREEMENT

§ 1411. Purpose and police—Article I

The party states find that charges outstanding against a prisoner, detainees based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainees based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainees, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

§ 1412. Definitions—Article II

As used in this agreement, unless the context clearly requires otherwise:

1. Receiving state. "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV.

2. Sending state. "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III or at the time that a request for custody or availability is initiated pursuant to Article IV.

3. State. "State" shall mean a state of the United States, the United States of America, a territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

§ 1413. Request for final disposition—Article III

1. Trial pending. Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for final disposition to be made of the indictment, information or complaint, provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner.

2. Request for final disposition. The written notice and request for final disposition referred to in subsection 1 shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

3.—Notification. The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

4.—Application. Any request for final disposition made by a prisoner pursuant to subsection 1 shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainees have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The war-

den, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this subsection shall be accompanied by copies of the prisoner's written notice, request and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

5.—Waiver of extradition. Any request for final disposition made by a prisoner pursuant to subsection 1 shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of subsection 1 and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with this agreement. Nothing in this subsection shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

6.—Escape. Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in subsection 1 shall void the request.

§ 1414. Temporary custody—Article IV

1. Request. The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V, subsection 1, upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated, provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request, and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

2. Certificate. Upon receipt of the officer's written request as provided in subsection 1, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged

detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

3. Time of trial. In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

4. Legality of delivery. Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in subsection 1, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

5. Order dismissing. If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V, subsection 5, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

§ 1415. Delivery—Article V

1. Request. In response to a request made under Article III or Article IV, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

2. Identification; copy of indictment. The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

A. Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

B. A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

3. Dismissed. If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has

been lodged is not brought to trial within the period provided in Article III or Article IV, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

4. Purpose. The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

5. Return. At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

6. Time on sentence. During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

7. Escape. For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

8. Responsibility; costs. From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. This subsection shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing in this subsection shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

§ 1416. Time periods tolled—Article VI

In determining the duration and expiration dates of the time periods provided in Articles III and IV, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

§ 1417. Rules and regulations—Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

§ 1418. Effective date—Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

§ 1419. Construction—Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

SUBCHAPTER II

PROVISIONS RELATING TO AGREEMENT

§1421. Designation of courts

The phrase "appropriate court" as used in subchapter I, with reference to the courts of this State, shall mean the District Court or the Superior Court as applicable.

§ 1422. Enforcement and cooperation by courts and agencies

All courts, departments, agencies, officers and employees of this State and its political subdivisions are directed to enforce the agreement on detainees contained within subsection I and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

§ 1423. Habitual criminal

Nothing in this chapter shall be construed to require the application of Title 15, section 1742 to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of the agreement on detainees under subsection I.

§ 1424. Escape

Any person, who escapes or attempts to escape from custody while in another state pursuant to subchapter I, shall be subject to the penalties provided in section 710 for escape or attempt to escape from the State Prison.

§ 1425. Warden or superintendent to give over the person of inmate

It shall be lawful and mandatory upon the warden or superintendent in charge of a penal or correctional institution in this State to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainees.

§ 1426. Director of Corrections to make rules and regulations.

The Director of Corrections is designated as the officer provided for in section 1417.

Sec. 2. Distribution. Copies of this Act shall, upon its approval, be transmitted by the Director of Corrections to the governor of each state, the Attorney General and the Administrator of General Services of the United States, and the Council of State Governments.

Sec. 3. Effective date. This Act shall take effect on January 1, 1972.

STATEMENT OF FACT

This Act will render it possible for the State of Maine to enter into agreements with other states, party to the Interstate Compact on Detainers, of which there are currently 28, permitting persons serving sentences in Maine institutions, and charged with the commission of offenses in other party states to be taken before the courts of such states for trial upon such charges, and will permit persons incarcerated in other states, party to the compact, and charged with the commission of offenses in Maine to be brought before the courts in this state for trial on such charges.