

VOLUME NO. 37

OPINION NO. 166

DETAINERS - Interstate Agreement on Detainers, responsibility for transporting criminal defendants; DETAINERS - Interstate Agreement on Detainers, application for speedy trial, waiver of extradition; CRIMINAL LAW - Interstate Agreement on Detainers, responsibility for transporting criminal defendants; CRIMINAL LAW - Interstate Agreement on Detainers, application for speedy trial, waiver of extradition; REVISED CODES OF MONTANA, 1947 - Sections 95-3131, et seq., 95-3101, et seq.

- HELD: 1. No state agency has been given the duty or the authority to bear the expense of transporting criminal defendants to and from Montana under the Interstate Agreement on Detainers.
2. When a criminal defendant charged in Montana but imprisoned in another state makes application for speedy trial under the Interstate Agreement on Detainers, that application operates as a waiver of extradition.

27 October 1978

Harold F. Hanser, Esq.
Yellowstone County Attorney
Yellowstone County Courthouse
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following questions:

1. Is any state agency responsible for the expense of transporting criminal defendants to and from Montana under the Interstate Agreement on Detainers, sections 95-3131 through 95-3136?
2. When a criminal defendant charged in Montana but imprisoned in another state makes application for speedy trial under the provisions of sections 95-3131 through 95-3136, may the county attorney of the county in which the defendant is charged proceed to request extradition of the defendant under sections 95-3101 through 95-3130?

The Interstate Agreement on Detainers, section 95-3131, et seq., was adopted to provide a uniform method for bringing to trial a person charged with crime in this state, but who is in custody pursuant to a conviction in another state. (Article I.) When the prosecuting authorities of this state lodge a detainer against the prisoner in another state, the prisoner may demand final disposition of the charges in this state pursuant to Article III, or the prosecuting authorities of this state may demand the presence of the prisoner for trial pursuant to Article IV. After disposition of the charges in this state, the prisoner must be returned to the custody of the sending state. (Article V(e).)

Article V(h) of the agreement addresses the responsibility for the costs of transporting and caring for the prisoner:

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. The provisions of this paragraph 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 herein contained 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.

When a prisoner is brought to this state pursuant to a detainer some agency in this state must pay the costs. The Agreement, however, specifically disclaims any intention to determine which person or agency within the state is responsible.

The Legislature has provided no specific guidance for answering this question. No statute has been found placing the obligation on any agency of state government or authorizing any agency to expend public funds for these purposes. If the Legislature had intended for any state agency to be responsible for the transportation costs under Agreement on Detainers, it would have expressly provided therefor as it has done under the Extradition Act. (Section 95-3124.) The similarity between the two acts makes the absence of payment provisions from the Agreement on Detainers a significant factor.

Therefore, the costs must be paid by the county in which the charges have been brought, and whose county attorney has filed the detainer. This is consistent with the difference between the Agreement on Detainers and the Extradition Act. While the state, through the Governor, is intimately involved in extradition proceedings, the decision to bring charges and file a detainer involves only the county. Unless the Legislature specifically provides otherwise, the county must pay.

Your second question is answered by Article III(3) of the Agreement on Detainers, at least in situations in which the prisoner himself demands final disposition of the charges in this state under Article III(a). In these cases, the agreement specifically provides that the prisoner's demand is "deemed to be a waiver of extradition..." Therefore, extradition would be a useless act, and the Agreement on

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Detainers (Art. V) provides an express procedure for securing the presence of the prisoner for trial. The Governor has no mandatory duty under the Extradition Act to commence an extradition proceeding. Therefore, if extradition is requested in a situation in which it has been waived, and if there is another method, such as the Agreement on Detainers, provided for returning the person to this state for trial, then the Governor would be justified, and in fact should, refuse to commence extradition.

The decision as to whether to request extradition or lodge a detainer, is one to be made by the county attorney. If he is serious about his desire to obtain a prisoner's presence for trial, and if he is concerned about the cost responsibility under the Agreement on Detainers, then he can proceed to request extradition under section 95-3105, which specifically provides for the extradition of persons "imprisoned or ... held under criminal proceedings then pending against him in another state...."

THEREFORE, IT IS MY OPINION:

1. No state agency has been given the duty or the authority to bear the expense of transporting criminal defendants to and from Montana under the Interstate Agreement on Detainers.
2. When a criminal defendant charged in Montana but imprisoned in another state makes application for speedy trial under the Interstate Agreement on Detainers, that application operates as a waiver of extradition.

Very truly yours,

MIKE GREELY
Attorney General