

SENATE BILL NO. 257

INTRODUCED BY DANIELS

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

IN THE SENATE

January 26, 1985	Introduced and referred to Committee on Judiciary.
February 12, 1985	Committee recommend bill do pass. Report adopted.
February 13, 1985	Bill printed and placed on members' desks.
February 15, 1985	Second reading, do pass.
February 16, 1985	Considered correctly engrossed.
February 18, 1985	Third reading, passed. Ayes, 48; Noes, 0.
	Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Judiciary.
March 15, 1985	Committee recommend bill be concurrent in as amended. Report adopted.
March 19, 1985	Second reading, concurrent in.
March 21, 1985	Third reading, concurrent in.
	Returned to Senate with amendments.

IN THE SENATE

March 21, 1985

Received from House.

March 23, 1985

Second reading, amendments
concurrent in.

March 26, 1985

Third reading, amendments
concurrent in. Ayes, 50;
Noes, 0.

Sent to enrolling.

Reported correctly enrolled.

1 Senate BILL NO. 257
 2 INTRODUCED BY David
 3 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE A TIME FOR
 6 TRIAL LIMITATION IN THE DETAINER LAW SO THAT IT CONFORMS TO
 7 THE UNIFORM DETAINER LAW; AMENDING SECTION 46-31-101, MCA;
 8 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 46-31-101, MCA, is amended to read:
 12 "46-31-101. Agreement on detainers -- enactment and
 13 text. The agreement on detainers is hereby enacted into law
 14 and entered into by this state with all other jurisdictions
 15 legally joining therein in the form substantially as
 16 follows:

17 The contracting states solemnly agree that:

18 Article I

19 The party states find that charges outstanding against
 20 a prisoner, detainers based on untried indictments,
 21 informations, or complaints, and difficulties in securing
 22 speedy trial of persons already incarcerated in other
 23 jurisdictions produce uncertainties which obstruct programs
 24 of prisoner treatment and rehabilitation. Accordingly, it is
 25 the policy of the party states and the purpose of this

1 agreement to encourage the expeditious and orderly
 2 disposition of such charges and determination of the proper
 3 status of any and all detainers based on untried
 4 indictments, informations, or complaints. The party states
 5 also find that proceedings with reference to such charges
 6 and detainers, when emanating from another jurisdiction,
 7 cannot properly be had in the absence of cooperative
 8 procedures. It is the further purpose of this agreement to
 9 provide such cooperative procedures.

10 Article II

11 As used in this agreement:

12 (1) "state" shall mean a state of the United States,
 13 the United States of America, a territory or possession of
 14 the United States, the District of Columbia, the
 15 Commonwealth of Puerto Rico;

16 (2) "sending state" shall mean a state in which a
 17 prisoner is incarcerated at the time that he initiates a
 18 request for final disposition pursuant to Article III hereof
 19 or at the time that a request for custody or availability is
 20 initiated pursuant to Article IV hereof;

21 (3) "receiving state" shall mean the state in which
 22 trial is to be had on an indictment, information, or
 23 complaint pursuant to Article III or Article IV hereof.

24 Article III

25 (1) Whenever a person has entered upon a term of

1 imprisonment in a penal or correctional institution of a
 2 party state and whenever during the continuance of the term
 3 of imprisonment there is pending in any other party state
 4 any untried indictment, information, or complaint on the
 5 basis of which a detainer has been lodged against the
 6 prisoner, he shall be brought to trial ~~at the next term of~~
 7 court within 180 days after he shall have caused to be
 8 delivered to the prosecuting officer and the appropriate
 9 court of the prosecuting officer's jurisdiction written
 10 notice of the place of his imprisonment and his request for
 11 a final disposition to be made of the indictment,
 12 information, or complaint; provided that for good cause
 13 shown in open court, the prisoner or his counsel being
 14 present, the court having jurisdiction of the matter may
 15 grant any necessary or reasonable continuance. The request
 16 of the prisoner shall be accompanied by a certificate of the
 17 appropriate official having custody of the prisoner, stating
 18 the term of commitment under which the prisoner is being
 19 held, the time already served, the time remaining to be
 20 served on the sentence, the amount of good time earned, the
 21 time of parole eligibility of the prisoner, and any
 22 decisions of the state parole agency relating to the
 23 prisoner.

24 (2) The written notice and request for final
 25 disposition referred to in subsection (1) hereof shall be

1 given or sent by the prisoner to the warden, commissioner of
 2 corrections, or other official having custody of him, who
 3 shall promptly forward it together with the certificate to
 4 the appropriate prosecuting official and court by registered
 5 or certified mail, return receipt requested.

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

12 (4) Any request for final disposition made by a
 13 prisoner pursuant to subsection (1) hereof shall operate as
 14 a request for final disposition of all untried indictments,
 15 informations, or complaints on the basis of which detainees
 16 have been lodged against the prisoner from the state to
 17 whose prosecuting official the request for final disposition
 18 is specifically directed. The warden, commissioner of
 19 corrections, or other official having custody of the
 20 prisoner shall forthwith notify all appropriate prosecuting
 21 officers and courts in the several jurisdictions within the
 22 state to which the prisoner's request for final disposition
 23 is being sent of the proceeding being initiated by the
 24 prisoner. Any notification sent pursuant to this subsection
 25 shall be accompanied by copies of the prisoner's written

1 notice, request, and the certificate. If trial is not had
 2 on any indictment, information, or complaint contemplated
 3 hereby prior to the return of the prisoner to the original
 4 place of imprisonment, such indictment, information, or
 5 complaint shall not be of any further force or effect, and
 6 the court shall enter an order dismissing the same with
 7 prejudice.

8 (5) Any request for final disposition made by a
 9 prisoner pursuant to subsection (1) hereof shall also be
 10 deemed to be a waiver of extradition with respect to any
 11 charge or proceeding contemplated thereby or included
 12 therein by reason of subsection (4) hereof and a waiver of
 13 extradition to the receiving state to serve any sentence
 14 there imposed upon him after completion of his term of
 15 imprisonment in the sending state. The request for final
 16 disposition shall also constitute a consent by the prisoner
 17 to the production of his body in any court where his
 18 presence may be required in order to effectuate the purposes
 19 of this agreement and a further consent voluntarily to be
 20 returned to the original place of imprisonment in accordance
 21 with the provisions of this agreement. Nothing in this
 22 paragraph shall prevent the imposition of a concurrent
 23 sentence if otherwise permitted by law.

24 (6) Escape from custody by the prisoner subsequent to
 25 his execution of the request for final disposition referred

1 to in subsection (1) hereof shall void the request.

2 Article IV

3 (1) The appropriate officer of the jurisdiction in
 4 which an untried indictment, information, or complaint is
 5 pending shall be entitled to have a prisoner against whom he
 6 has lodged a detainer and who is serving a term of
 7 imprisonment in any party state made available in accordance
 8 with Article V(1) hereof upon presentation of a written
 9 request for temporary custody or availability to the
 10 appropriate authorities of the state in which the prisoner
 11 is incarcerated; provided that the court having jurisdiction
 12 of such indictment, information, or complaint shall have
 13 duly approved, recorded, and transmitted the request; and
 14 provided further that there shall be a period of 30 days
 15 after receipt by the appropriate authorities before the
 16 request be honored, within which period the governor of the
 17 sending state may disapprove the request for temporary
 18 custody or availability either upon his own motion or upon
 19 motion of the prisoner.

20 (2) Upon receipt of the officer's written request as
 21 provided in subsection (1) hereof, the appropriate
 22 authorities having the prisoner in custody shall furnish the
 23 officer with a certificate stating the term of commitment
 24 under which the prisoner is being held, the time already
 25 served, the time remaining to be served on the sentence, the

1 amount of good time earned, the time of parole eligibility
 2 of the prisoner, and any decisions of the state parole
 3 agency relating to the prisoner. Said authorities
 4 simultaneously shall furnish all other officers and
 5 appropriate courts in the receiving state who have lodged
 6 detainers against the prisoner with similar certificates and
 7 with notices informing them of the request for custody or
 8 availability and of the reasons therefor.

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

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

22 (5) If trial is not had on any indictment,
 23 information, or complaint contemplated hereby prior to the
 24 prisoner's being returned to the original place of
 25 imprisonment pursuant to Article V(5) hereof, such

1 indictment, information, or complaint shall not be of any
 2 further force or effect and the court shall enter an order
 3 dismissing the same with prejudice.

4 Article V

5 (1) In response to a request made under Article III or
 6 Article IV hereof, the appropriate authority in a sending
 7 state shall offer to deliver temporary custody of such
 8 prisoner to the appropriate authority in the state where
 9 such indictment, information, or complaint is pending
 10 against such person in order that speedy and efficient
 11 prosecution may be had. If the request for final disposition
 12 is made by the prisoner, the offer of temporary custody
 13 shall accompany the written notice provided for in Article
 14 III of this agreement. In the case of a federal prisoner,
 15 the appropriate authority in the receiving state shall be
 16 entitled to temporary custody as provided by this agreement
 17 or to the prisoner's presence in federal custody at the
 18 place for trial, whichever custodial arrangement may be
 19 approved by the custodian.

20 (2) The officer or other representative of a state
 21 accepting an offer of temporary custody shall present the
 22 following upon demand:

23 (a) proper identification and evidence of his
 24 authority to act for the state into whose temporary custody
 25 the prisoner is to be given;

1 (b) a duly certified copy of the indictment,
2 information, or complaint on the basis of which the detainer
3 has been lodged and on the basis of which the request for
4 temporary custody of the prisoner has been made.

5 (3) If the appropriate authority shall refuse or fail
6 to accept temporary custody of said person or in the event
7 that an action on the indictment, information, or complaint
8 on the basis of which the detainer has been lodged is not
9 brought to trial within the periods provided by this
10 chapter, the appropriate court of the jurisdiction where the
11 indictment, information, or complaint has been pending shall
12 enter an order dismissing the same with prejudice and any
13 detainer based thereon shall cease to be of any force or
14 effect.

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

1 (5) At the earliest practicable time consonant with
2 the purposes of this agreement, the prisoner shall be
3 returned to the sending state.

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

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

18 (8) From the time that a party state receives custody
19 of a prisoner pursuant to this agreement until such prisoner
20 is returned to the territory and custody of the sending
21 state, the state in which the one or more untried
22 indictments, informations, or complaints are pending or in
23 which trial is being had shall be responsible for the
24 prisoner and shall also pay all costs of transporting,
25 caring for, keeping, and returning the prisoner. The

1 provisions of this subsection shall govern unless the states
 2 concerned shall have entered into a supplementary agreement
 3 providing for a different allocation of costs and
 4 responsibilities as between or among themselves. Nothing
 5 herein contained shall be construed to alter or affect any
 6 internal relationship among the departments, agencies, and
 7 officers of and in the government of a party state or
 8 between a party state and its subdivisions as to the payment
 9 of costs or responsibilities therefor.

10 Article VI

11 (1) In determining the duration and expiration dates
 12 of the time periods provided in Articles III and IV of this
 13 agreement, the running of said time periods shall be tolled
 14 whenever and for as long as the prisoner is unable to stand
 15 trial, as determined by the court having jurisdiction of the
 16 matter.

17 (2) No provision of this agreement and no remedy made
 18 available by this agreement shall apply to any person who is
 19 adjudged to be mentally ill.

20 Article VII

21 Each state party to this agreement shall designate an
 22 officer who, acting jointly with like officers of other
 23 party states, shall promulgate rules and regulations to
 24 carry out more effectively the terms and provisions of this
 25 agreement and who shall provide within and without the state

1 information necessary to the effective operation of this
 2 agreement.

3 Article VIII

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

12 Article IX

13 This agreement shall be liberally construed so as to
 14 effectuate its purposes. The provisions of this agreement
 15 shall be severable, and if any phrase, clause, sentence, or
 16 provision of this agreement is declared to be contrary to
 17 the constitution of any party state or of the United States
 18 or the applicability thereof to any government, agency,
 19 person, or circumstances is held invalid, the validity of
 20 the remainder of this agreement and the applicability
 21 thereof to any government, agency, person, or circumstance
 22 shall not be affected thereby. If this agreement shall be
 23 held contrary to the constitution of any state party hereto,
 24 the agreement shall remain in full force and effect as to
 25 the remaining states and in full force and effect as to the

LC 1083/01

1 state affected as to all severable matters."

2 NEW SECTION. Section 2. Effective date. This act is

3 effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

1 Senate BILL NO. 257
2 INTRODUCED BY David
3 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE A TIME FOR
6 TRIAL LIMITATION IN THE DETAINER LAW SO THAT IT CONFORMS TO
7 THE UNIFORM DETAINER LAW; AMENDING SECTION 46-31-101, MCA;
8 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 46-31-101, MCA, is amended to read:
12 "46-31-101. Agreement on detainers -- enactment and
13 text. The agreement on detainers is hereby enacted into law
14 and entered into by this state with all other jurisdictions
15 legally joining therein in the form substantially as
16 follows:

17 The contracting states solemnly agree that:

18 Article I

19 The party states find that charges outstanding against
20 a prisoner, detainers based on untried indictments,
21 informations, or complaints, and difficulties in securing
22 speedy trial of persons already incarcerated in other
23 jurisdictions produce uncertainties which obstruct programs
24 of prisoner treatment and rehabilitation. Accordingly, it is
25 the policy of the party states and the purpose of this

1 agreement to encourage the expeditious and orderly
2 disposition of such charges and determination of the proper
3 status of any and all detainers based on untried
4 indictments, informations, or complaints. The party states
5 also find that proceedings with reference to such charges
6 and detainers, when emanating from another jurisdiction,
7 cannot properly be had in the absence of cooperative
8 procedures. It is the further purpose of this agreement to
9 provide such cooperative procedures.

10 Article II

11 As used in this agreement:

12 (1) "state" shall mean a state of the United States,
13 the United States of America, a territory or possession of
14 the United States, the District of Columbia, the
15 Commonwealth of Puerto Rico;

16 (2) "sending state" shall mean a state in which a
17 prisoner is incarcerated at the time that he initiates a
18 request for final disposition pursuant to Article III hereof
19 or at the time that a request for custody or availability is
20 initiated pursuant to Article IV hereof;

21 (3) "receiving state" shall mean the state in which
22 trial is to be had on an indictment, information, or
23 complaint pursuant to Article III or Article IV hereof.

24 Article III

25 (1) Whenever a person has entered upon a term of



1 imprisonment in a penal or correctional institution of a
 2 party state and whenever during the continuance of the term
 3 of imprisonment there is pending in any other party state
 4 any untried indictment, information, or complaint on the
 5 basis of which a detainer has been lodged against the
 6 prisoner, he shall be brought to trial ~~at the next term of~~
 7 court within 180 days after he shall have caused to be
 8 delivered to the prosecuting officer and the appropriate
 9 court of the prosecuting officer's jurisdiction written
 10 notice of the place of his imprisonment and his request for
 11 a final disposition to be made of the indictment,
 12 information, or complaint; provided that for good cause
 13 shown in open court, the prisoner or his counsel being
 14 present, the court having jurisdiction of the matter may
 15 grant any necessary or reasonable continuance. The request
 16 of the prisoner shall be accompanied by a certificate of the
 17 appropriate official having custody of the prisoner, stating
 18 the term of commitment under which the prisoner is being
 19 held, the time already served, the time remaining to be
 20 served on the sentence, the amount of good time earned, the
 21 time of parole eligibility of the prisoner, and any
 22 decisions of the state parole agency relating to the
 23 prisoner.

24 (2) The written notice and request for final
 25 disposition referred to in subsection (1) hereof shall be

1 given or sent by the prisoner to the warden, commissioner of
 2 corrections, or other official having custody of him, who
 3 shall promptly forward it together with the certificate to
 4 the appropriate prosecuting official and court by registered
 5 or certified mail, return receipt requested.

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

12 (4) Any request for final disposition made by a
 13 prisoner pursuant to subsection (1) hereof shall operate as
 14 a request for final disposition of all untried indictments,
 15 informations, or complaints on the basis of which detainees
 16 have been lodged against the prisoner from the state to
 17 whose prosecuting official the request for final disposition
 18 is specifically directed. The warden, commissioner of
 19 corrections, or other official having custody of the
 20 prisoner shall forthwith notify all appropriate prosecuting
 21 officers and courts in the several jurisdictions within the
 22 state to which the prisoner's request for final disposition
 23 is being sent of the proceeding being initiated by the
 24 prisoner. Any notification sent pursuant to this subsection
 25 shall be accompanied by copies of the prisoner's written

1 notice, request, and the certificate. If trial is not had
 2 on any indictment, information, or complaint contemplated
 3 hereby prior to the return of the prisoner to the original
 4 place of imprisonment, such indictment, information, or
 5 complaint shall not be of any further force or effect, and
 6 the court shall enter an order dismissing the same with
 7 prejudice.

8 (5) Any request for final disposition made by a
 9 prisoner pursuant to subsection (1) hereof shall also be
 10 deemed to be a waiver of extradition with respect to any
 11 charge or proceeding contemplated thereby or included
 12 therein by reason of subsection (4) hereof and a waiver of
 13 extradition to the receiving state to serve any sentence
 14 there imposed upon him after completion of his term of
 15 imprisonment in the sending state. The request for final
 16 disposition shall also constitute a consent by the prisoner
 17 to the production of his body in any court where his
 18 presence may be required in order to effectuate the purposes
 19 of this agreement and a further consent voluntarily to be
 20 returned to the original place of imprisonment in accordance
 21 with the provisions of this agreement. Nothing in this
 22 paragraph shall prevent the imposition of a concurrent
 23 sentence if otherwise permitted by law.

24 (6) Escape from custody by the prisoner subsequent to
 25 his execution of the request for final disposition referred

1 to in subsection (1) hereof shall void the request.

2 Article IV

3 (1) The appropriate officer of the jurisdiction in
 4 which an untried indictment, information, or complaint is
 5 pending shall be entitled to have a prisoner against whom he
 6 has lodged a detainer and who is serving a term of
 7 imprisonment in any party state made available in accordance
 8 with Article V(1) hereof upon presentation of a written
 9 request for temporary custody or availability to the
 10 appropriate authorities of the state in which the prisoner
 11 is incarcerated; provided that the court having jurisdiction
 12 of such indictment, information, or complaint shall have
 13 duly approved, recorded, and transmitted the request; and
 14 provided further that there shall be a period of 30 days
 15 after receipt by the appropriate authorities before the
 16 request be honored, within which period the governor of the
 17 sending state may disapprove the request for temporary
 18 custody or availability either upon his own motion or upon
 19 motion of the prisoner.

20 (2) Upon receipt of the officer's written request as
 21 provided in subsection (1) hereof, the appropriate
 22 authorities having the prisoner in custody shall furnish the
 23 officer with a certificate stating the term of commitment
 24 under which the prisoner is being held, the time already
 25 served, the time remaining to be served on the sentence, the

1 amount of good time earned, the time of parole eligibility
 2 of the prisoner, and any decisions of the state parole
 3 agency relating to the prisoner. Said authorities
 4 simultaneously shall furnish all other officers and
 5 appropriate courts in the receiving state who have lodged
 6 detainers against the prisoner with similar certificates and
 7 with notices informing them of the request for custody or
 8 availability and of the reasons therefor.

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

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

22 (5) If trial is not had on any indictment,
 23 information, or complaint contemplated hereby prior to the
 24 prisoner's being returned to the original place of
 25 imprisonment pursuant to Article V(5) hereof, such

1 indictment, information, or complaint shall not be of any
 2 further force or effect and the court shall enter an order
 3 dismissing the same with prejudice.

4 Article V

5 (1) In response to a request made under Article III or
 6 Article IV hereof, the appropriate authority in a sending
 7 state shall offer to deliver temporary custody of such
 8 prisoner to the appropriate authority in the state where
 9 such indictment, information, or complaint is pending
 10 against such person in order that speedy and efficient
 11 prosecution may be had. If the request for final disposition
 12 is made by the prisoner, the offer of temporary custody
 13 shall accompany the written notice provided for in Article
 14 III of this agreement. In the case of a federal prisoner,
 15 the appropriate authority in the receiving state shall be
 16 entitled to temporary custody as provided by this agreement
 17 or to the prisoner's presence in federal custody at the
 18 place for trial, whichever custodial arrangement may be
 19 approved by the custodian.

20 (2) The officer or other representative of a state
 21 accepting an offer of temporary custody shall present the
 22 following upon demand:

23 (a) proper identification and evidence of his
 24 authority to act for the state into whose temporary custody
 25 the prisoner is to be given;

1 (b) a duly certified copy of the indictment,
2 information, or complaint on the basis of which the detainer
3 has been lodged and on the basis of which the request for
4 temporary custody of the prisoner has been made.

5 (3) If the appropriate authority shall refuse or fail
6 to accept temporary custody of said person or in the event
7 that an action on the indictment, information, or complaint
8 on the basis of which the detainer has been lodged is not
9 brought to trial within the periods provided by this
10 chapter, the appropriate court of the jurisdiction where the
11 indictment, information, or complaint has been pending shall
12 enter an order dismissing the same with prejudice and any
13 detainer based thereon shall cease to be of any force or
14 effect.

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

1 (5) At the earliest practicable time consonant with
2 the purposes of this agreement, the prisoner shall be
3 returned to the sending state.

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

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

18 (8) From the time that a party state receives custody
19 of a prisoner pursuant to this agreement until such prisoner
20 is returned to the territory and custody of the sending
21 state, the state in which the one or more untried
22 indictments, informations, or complaints are pending or in
23 which trial is being had shall be responsible for the
24 prisoner and shall also pay all costs of transporting,
25 caring for, keeping, and returning the prisoner. The

1 provisions of this subsection shall govern unless the states
 2 concerned shall have entered into a supplementary agreement
 3 providing for a different allocation of costs and
 4 responsibilities as between or among themselves. Nothing
 5 herein contained shall be construed to alter or affect any
 6 internal relationship among the departments, agencies, and
 7 officers of and in the government of a party state or
 8 between a party state and its subdivisions as to the payment
 9 of costs or responsibilities therefor.

10 Article VI

11 (1) In determining the duration and expiration dates
 12 of the time periods provided in Articles III and IV of this
 13 agreement, the running of said time periods shall be tolled
 14 whenever and for as long as the prisoner is unable to stand
 15 trial, as determined by the court having jurisdiction of the
 16 matter.

17 (2) No provision of this agreement and no remedy made
 18 available by this agreement shall apply to any person who is
 19 adjudged to be mentally ill.

20 Article VII

21 Each state party to this agreement shall designate an
 22 officer who, acting jointly with like officers of other
 23 party states, shall promulgate rules and regulations to
 24 carry out more effectively the terms and provisions of this
 25 agreement and who shall provide within and without the state

1 information necessary to the effective operation of this
 2 agreement.

3 Article VIII

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

12 Article IX

13 This agreement shall be liberally construed so as to
 14 effectuate its purposes. The provisions of this agreement
 15 shall be severable, and if any phrase, clause, sentence, or
 16 provision of this agreement is declared to be contrary to
 17 the constitution of any party state or of the United States
 18 or the applicability thereof to any government, agency,
 19 person, or circumstances is held invalid, the validity of
 20 the remainder of this agreement and the applicability
 21 thereof to any government, agency, person, or circumstance
 22 shall not be affected thereby. If this agreement shall be
 23 held contrary to the constitution of any state party hereto,
 24 the agreement shall remain in full force and effect as to
 25 the remaining states and in full force and effect as to the

LC 1083/01

1 state affected as to all severable matters."

2 NEW SECTION. Section 2. Effective date. This act is

3 effective on passage and approval.

-End-

1 *Senate* BILL NO. 257
 2 INTRODUCED BY *Amiel*
 3 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE A TIME FOR
 6 TRIAL LIMITATION IN THE DETAINER LAW SO THAT IT CONFORMS TO
 7 THE UNIFORM DETAINER LAW; AMENDING SECTION 46-31-101, MCA;
 8 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 46-31-101, MCA, is amended to read:
 12 "46-31-101. Agreement on detainers -- enactment and
 13 text. The agreement on detainers is hereby enacted into law
 14 and entered into by this state with all other jurisdictions
 15 legally joining therein in the form substantially as
 16 follows:

17 The contracting states solemnly agree that:

18 Article I

19 The party states find that charges outstanding against
 20 a prisoner, detainers based on untried indictments,
 21 informations, or complaints, and difficulties in securing
 22 speedy trial of persons already incarcerated in other
 23 jurisdictions produce uncertainties which obstruct programs
 24 of prisoner treatment and rehabilitation. Accordingly, it is
 25 the policy of the party states and the purpose of this

1 agreement to encourage the expeditious and orderly
 2 disposition of such charges and determination of the proper
 3 status of any and all detainers based on untried
 4 indictments, informations, or complaints. The party states
 5 also find that proceedings with reference to such charges
 6 and detainers, when emanating from another jurisdiction,
 7 cannot properly be had in the absence of cooperative
 8 procedures. It is the further purpose of this agreement to
 9 provide such cooperative procedures.

10 Article II

11 As used in this agreement:

12 (1) "state" shall mean a state of the United States,
 13 the United States of America, a territory or possession of
 14 the United States, the District of Columbia, the
 15 Commonwealth of Puerto Rico;

16 (2) "sending state" shall mean a state in which a
 17 prisoner is incarcerated at the time that he initiates a
 18 request for final disposition pursuant to Article III hereof
 19 or at the time that a request for custody or availability is
 20 initiated pursuant to Article IV hereof;

21 (3) "receiving state" shall mean the state in which
 22 trial is to be had on an indictment, information, or
 23 complaint pursuant to Article III or Article IV hereof.

24 Article III

25 (1) Whenever a person has entered upon a term of

1 imprisonment in a penal or correctional institution of a
2 party state and whenever during the continuance of the term
3 of imprisonment there is pending in any other party state
4 any untried indictment, information, or complaint on the
5 basis of which a detainer has been lodged against the
6 prisoner, he shall be brought to trial ~~at the next term of~~
7 court within 180 days after he shall have caused to be
8 delivered to the prosecuting officer and the appropriate
9 court of the prosecuting officer's jurisdiction written
10 notice of the place of his imprisonment and his request for
11 a final disposition to be made of the indictment,
12 information, or complaint; provided that for good cause
13 shown in open court, the prisoner or his counsel being
14 present, the court having jurisdiction of the matter may
15 grant any necessary or reasonable continuance. The request
16 of the prisoner shall be accompanied by a certificate of the
17 appropriate official having custody of the prisoner, stating
18 the term of commitment under which the prisoner is being
19 held, the time already served, the time remaining to be
20 served on the sentence, the amount of good time earned, the
21 time of parole eligibility of the prisoner, and any
22 decisions of the state parole agency relating to the
23 prisoner.

24 (2) The written notice and request for final
25 disposition referred to in subsection (1) hereof shall be

1 given or sent by the prisoner to the warden, commissioner of
2 corrections, or other official having custody of him, who
3 shall promptly forward it together with the certificate to
4 the appropriate prosecuting official and court by registered
5 or certified mail, return receipt requested.

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

12 (4) Any request for final disposition made by a
13 prisoner pursuant to subsection (1) hereof shall operate as
14 a request for final disposition of all untried indictments,
15 informations, or complaints on the basis of which detainees
16 have been lodged against the prisoner from the state to
17 whose prosecuting official the request for final disposition
18 is specifically directed. The warden, commissioner of
19 corrections, or other official having custody of the
20 prisoner shall forthwith notify all appropriate prosecuting
21 officers and courts in the several jurisdictions within the
22 state to which the prisoner's request for final disposition
23 is being sent of the proceeding being initiated by the
24 prisoner. Any notification sent pursuant to this subsection
25 shall be accompanied by copies of the prisoner's written

1 notice, request, and the certificate. If trial is not had
 2 on any indictment, information, or complaint contemplated
 3 hereby prior to the return of the prisoner to the original
 4 place of imprisonment, such indictment, information, or
 5 complaint shall not be of any further force or effect, and
 6 the court shall enter an order dismissing the same with
 7 prejudice.

8 (5) Any request for final disposition made by a
 9 prisoner pursuant to subsection (1) hereof shall also be
 10 deemed to be a waiver of extradition with respect to any
 11 charge or proceeding contemplated thereby or included
 12 therein by reason of subsection (4) hereof and a waiver of
 13 extradition to the receiving state to serve any sentence
 14 there imposed upon him after completion of his term of
 15 imprisonment in the sending state. The request for final
 16 disposition shall also constitute a consent by the prisoner
 17 to the production of his body in any court where his
 18 presence may be required in order to effectuate the purposes
 19 of this agreement and a further consent voluntarily to be
 20 returned to the original place of imprisonment in accordance
 21 with the provisions of this agreement. Nothing in this
 22 paragraph shall prevent the imposition of a concurrent
 23 sentence if otherwise permitted by law.

24 (6) Escape from custody by the prisoner subsequent to
 25 his execution of the request for final disposition referred

1 to in subsection (1) hereof shall void the request.

2 Article IV

3 (1) The appropriate officer of the jurisdiction in
 4 which an untried indictment, information, or complaint is
 5 pending shall be entitled to have a prisoner against whom he
 6 has lodged a detainer and who is serving a term of
 7 imprisonment in any party state made available in accordance
 8 with Article V(1) hereof upon presentation of a written
 9 request for temporary custody or availability to the
 10 appropriate authorities of the state in which the prisoner
 11 is incarcerated; provided that the court having jurisdiction
 12 of such indictment, information, or complaint shall have
 13 duly approved, recorded, and transmitted the request; and
 14 provided further that there shall be a period of 30 days
 15 after receipt by the appropriate authorities before the
 16 request be honored, within which period the governor of the
 17 sending state may disapprove the request for temporary
 18 custody or availability either upon his own motion or upon
 19 motion of the prisoner.

20 (2) Upon receipt of the officer's written request as
 21 provided in subsection (1) hereof, the appropriate
 22 authorities having the prisoner in custody shall furnish the
 23 officer with a certificate stating the term of commitment
 24 under which the prisoner is being held, the time already
 25 served, the time remaining to be served on the sentence, the

1 amount of good time earned, the time of parole eligibility
 2 of the prisoner, and any decisions of the state parole
 3 agency relating to the prisoner. Said authorities
 4 simultaneously shall furnish all other officers and
 5 appropriate courts in the receiving state who have lodged
 6 detainers against the prisoner with similar certificates and
 7 with notices informing them of the request for custody or
 8 availability and of the reasons therefor.

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

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

22 (5) If trial is not had on any indictment,
 23 information, or complaint contemplated hereby prior to the
 24 prisoner's being returned to the original place of
 25 imprisonment pursuant to Article V(5) hereof, such

1 indictment, information, or complaint shall not be of any
 2 further force or effect and the court shall enter an order
 3 dismissing the same with prejudice.

4 Article V

5 (1) In response to a request made under Article III or
 6 Article IV hereof, the appropriate authority in a sending
 7 state shall offer to deliver temporary custody of such
 8 prisoner to the appropriate authority in the state where
 9 such indictment, information, or complaint is pending
 10 against such person in order that speedy and efficient
 11 prosecution may be had. If the request for final disposition
 12 is made by the prisoner, the offer of temporary custody
 13 shall accompany the written notice provided for in Article
 14 III of this agreement. In the case of a federal prisoner,
 15 the appropriate authority in the receiving state shall be
 16 entitled to temporary custody as provided by this agreement
 17 or to the prisoner's presence in federal custody at the
 18 place for trial, whichever custodial arrangement may be
 19 approved by the custodian.

20 (2) The officer or other representative of a state
 21 accepting an offer of temporary custody shall present the
 22 following upon demand:

23 (a) proper identification and evidence of his
 24 authority to act for the state into whose temporary custody
 25 the prisoner is to be given;

1 (b) a duly certified copy of the indictment,
2 information, or complaint on the basis of which the detainer
3 has been lodged and on the basis of which the request for
4 temporary custody of the prisoner has been made.

5 (3) If the appropriate authority shall refuse or fail
6 to accept temporary custody of said person or in the event
7 that an action on the indictment, information, or complaint
8 on the basis of which the detainer has been lodged is not
9 brought to trial within the periods provided by this
10 chapter, the appropriate court of the jurisdiction where the
11 indictment, information, or complaint has been pending shall
12 enter an order dismissing the same with prejudice and any
13 detainer based thereon shall cease to be of any force or
14 effect.

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

1 (5) At the earliest practicable time consonant with
2 the purposes of this agreement, the prisoner shall be
3 returned to the sending state.

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

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

18 (8) From the time that a party state receives custody
19 of a prisoner pursuant to this agreement until such prisoner
20 is returned to the territory and custody of the sending
21 state, the state in which the one or more untried
22 indictments, informations, or complaints are pending or in
23 which trial is being had shall be responsible for the
24 prisoner and shall also pay all costs of transporting,
25 caring for, keeping, and returning the prisoner. The

1 provisions of this subsection shall govern unless the states
 2 concerned shall have entered into a supplementary agreement
 3 providing for a different allocation of costs and
 4 responsibilities as between or among themselves. Nothing
 5 herein contained shall be construed to alter or affect any
 6 internal relationship among the departments, agencies, and
 7 officers of and in the government of a party state or
 8 between a party state and its subdivisions as to the payment
 9 of costs or responsibilities therefor.

10 Article VI

11 (1) In determining the duration and expiration dates
 12 of the time periods provided in Articles III and IV of this
 13 agreement, the running of said time periods shall be tolled
 14 whenever and for as long as the prisoner is unable to stand
 15 trial, as determined by the court having jurisdiction of the
 16 matter.

17 (2) No provision of this agreement and no remedy made
 18 available by this agreement shall apply to any person who is
 19 adjudged to be mentally ill.

20 Article VII

21 Each state party to this agreement shall designate an
 22 officer who, acting jointly with like officers of other
 23 party states, shall promulgate rules and regulations to
 24 carry out more effectively the terms and provisions of this
 25 agreement and who shall provide within and without the state

1 information necessary to the effective operation of this
 2 agreement.

3 Article VIII

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

12 Article IX

13 This agreement shall be liberally construed so as to
 14 effectuate its purposes. The provisions of this agreement
 15 shall be severable, and if any phrase, clause, sentence, or
 16 provision of this agreement is declared to be contrary to
 17 the constitution of any party state or of the United States
 18 or the applicability thereof to any government, agency,
 19 person, or circumstances is held invalid, the validity of
 20 the remainder of this agreement and the applicability
 21 thereof to any government, agency, person, or circumstance
 22 shall not be affected thereby. If this agreement shall be
 23 held contrary to the constitution of any state party hereto,
 24 the agreement shall remain in full force and effect as to
 25 the remaining states and in full force and effect as to the

LC 1083/01

1 state affected as to all severable matters."

2 NEW SECTION. Section 2. Effective date. This act is

3 effective on passage and approval.

-End-

STANDING COMMITTEE REPORT

HOUSE

March 15

1985

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate

Bill No. 257

Third reading copy (Blue)
color

CHANGE TIME FOR TRIAL LIMITATION IN DETAINER LAW

Respectfully report as follows: That Senate

Bill No. 257

be amended as follows:

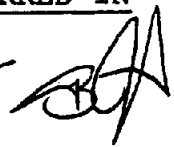
1. Title, line 7.

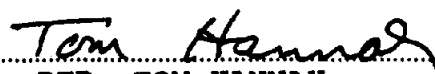
Strike: "UNIFORM DETAINER LAW"

Insert: "INTERSTATE AGREEMENT ON DETAINERS"

AND AS AMENDED,
BE CONCURRED IN

~~XXXXXX~~

tw 3/15 



REP. TOM HANNAH,

Chairman.

1 SENATE BILL NO. 257
 2 INTRODUCED BY DANIELS
 3 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE A TIME FOR
 6 TRIAL LIMITATION IN THE DETAINER LAW SO THAT IT CONFORMS TO
 7 THE UNIFORM-DETAINDER-LAW INTERSTATE AGREEMENT ON DETAINERS;
 8 AMENDING SECTION 46-31-101, MCA; AND PROVIDING AN IMMEDIATE
 9 EFFECTIVE DATE."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Section 46-31-101, MCA, is amended to read:
 13 "46-31-101. Agreement on detainers -- enactment and
 14 text. The agreement on detainers is hereby enacted into law
 15 and entered into by this state with all other jurisdictions
 16 legally joining therein in the form substantially as
 17 follows:

18 The contracting states solemnly agree that:
 19 Article I
 20 The party states find that charges outstanding against
 21 a prisoner, detainers based on untried indictments,
 22 informations, or complaints, and difficulties in securing
 23 speedy trial of persons already incarcerated in other
 24 jurisdictions produce uncertainties which obstruct programs
 25 of prisoner treatment and rehabilitation. Accordingly, it is

1 the policy of the party states and the purpose of this
 2 agreement to encourage the expeditious and orderly
 3 disposition of such charges and determination of the proper
 4 status of any and all detainers based on untried
 5 indictments, informations, or complaints. The party states
 6 also find that proceedings with reference to such charges
 7 and detainers, when emanating from another jurisdiction,
 8 cannot properly be had in the absence of cooperative
 9 procedures. It is the further purpose of this agreement to
 10 provide such cooperative procedures.

11 Article II
 12 As used in this agreement:
 13 (1) "state" shall mean a state of the United States,
 14 the United States of America, a territory or possession of
 15 the United States, the District of Columbia, the
 16 Commonwealth of Puerto Rico;
 17 (2) "sending state" shall mean a state in which a
 18 prisoner is incarcerated at the time that he initiates a
 19 request for final disposition pursuant to Article III hereof
 20 or at the time that a request for custody or availability is
 21 initiated pursuant to Article IV hereof;
 22 (3) "receiving state" shall mean the state in which
 23 trial is to be had on an indictment, information, or
 24 complaint pursuant to Article III or Article IV hereof.

25 Article III



1 (1) Whenever a person has entered upon a term of
 2 imprisonment in a penal or correctional institution of a
 3 party state and whenever during the continuance of the term
 4 of imprisonment there is pending in any other party state
 5 any untried indictment, information, or complaint on the
 6 basis of which a detainer has been lodged against the
 7 prisoner, he shall be brought to trial ~~at the next term of~~
 8 court within 180 days after he shall have caused to be
 9 delivered to the prosecuting officer and the appropriate
 10 court of the prosecuting officer's jurisdiction written
 11 notice of the place of his imprisonment and his request for
 12 a final disposition to be made of the indictment,
 13 information, or complaint; provided that for good cause
 14 shown in open court, the prisoner or his counsel being
 15 present, the court having jurisdiction of the matter may
 16 grant any necessary or reasonable continuance. The request
 17 of the prisoner shall be accompanied by a certificate of the
 18 appropriate official having custody of the prisoner, stating
 19 the term of commitment under which the prisoner is being
 20 held, the time already served, the time remaining to be
 21 served on the sentence, the amount of good time earned, the
 22 time of parole eligibility of the prisoner, and any
 23 decisions of the state parole agency relating to the
 24 prisoner.

25 (2) The written notice and request for final

1 disposition referred to in subsection (1) hereof shall be
 2 given or sent by the prisoner to the warden, commissioner of
 3 corrections, or other official having custody of him, who
 4 shall promptly forward it together with the certificate to
 5 the appropriate prosecuting official and court by registered
 6 or certified mail, return receipt requested.

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

13 (4) Any request for final disposition made by a
 14 prisoner pursuant to subsection (1) hereof shall operate as
 15 a request for final disposition of all untried indictments,
 16 informations, or complaints on the basis of which detainees
 17 have been lodged against the prisoner from the state to
 18 whose prosecuting official the request for final disposition
 19 is specifically directed. The warden, commissioner of
 20 corrections, or other official having custody of the
 21 prisoner shall forthwith notify all appropriate prosecuting
 22 officers and courts in the several jurisdictions within the
 23 state to which the prisoner's request for final disposition
 24 is being sent of the proceeding being initiated by the
 25 prisoner. Any notification sent pursuant to this subsection

1 shall be accompanied by copies of the prisoner's written
 2 notice, request, and the certificate. If trial is not had
 3 on any indictment, information, or complaint contemplated
 4 hereby prior to the return of the prisoner to the original
 5 place of imprisonment, such indictment, information, or
 6 complaint shall not be of any further force or effect, and
 7 the court shall enter an order dismissing the same with
 8 prejudice.

9 (5) Any request for final disposition made by a
 10 prisoner pursuant to subsection (1) hereof shall also be
 11 deemed to be a waiver of extradition with respect to any
 12 charge or proceeding contemplated thereby or included
 13 therein by reason of subsection (4) hereof and a waiver of
 14 extradition to the receiving state to serve any sentence
 15 there imposed upon him after completion of his term of
 16 imprisonment in the sending state. The request for final
 17 disposition shall also constitute a consent by the prisoner
 18 to the production of his body in any court where his
 19 presence may be required in order to effectuate the purposes
 20 of this agreement and a further consent voluntarily to be
 21 returned to the original place of imprisonment in accordance
 22 with the provisions of this agreement. Nothing in this
 23 paragraph shall prevent the imposition of a concurrent
 24 sentence if otherwise permitted by law.

25 (6) Escape from custody by the prisoner subsequent to

1 his execution of the request for final disposition referred
 2 to in subsection (1) hereof shall void the request.

3 Article IV

4 (1) The appropriate officer of the jurisdiction in
 5 which an untried indictment, information, or complaint is
 6 pending shall be entitled to have a prisoner against whom he
 7 has lodged a detainer and who is serving a term of
 8 imprisonment in any party state made available in accordance
 9 with Article V(1) hereof upon presentation of a written
 10 request for temporary custody or availability to the
 11 appropriate authorities of the state in which the prisoner
 12 is incarcerated; provided that the court having jurisdiction
 13 of such indictment, information, or complaint shall have
 14 duly approved, recorded, and transmitted the request; and
 15 provided further that there shall be a period of 30 days
 16 after receipt by the appropriate authorities before the
 17 request be honored, within which period the governor of the
 18 sending state may disapprove the request for temporary
 19 custody or availability either upon his own motion or upon
 20 motion of the prisoner.

21 (2) Upon receipt of the officer's written request as
 22 provided in subsection (1) hereof, the appropriate
 23 authorities having the prisoner in custody shall furnish the
 24 officer with a certificate stating the term of commitment
 25 under which the prisoner is being held, the time already

1 served, the time remaining to be served on the sentence, the
 2 amount of good time earned, the time of parole eligibility
 3 of the prisoner, and any decisions of the state parole
 4 agency relating to the prisoner. Said authorities
 5 simultaneously shall furnish all other officers and
 6 appropriate courts in the receiving state who have lodged
 7 detainers against the prisoner with similar certificates and
 8 with notices informing them of the request for custody or
 9 availability and of the reasons therefor.

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

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

23 (5) If trial is not had on any indictment,
 24 information, or complaint contemplated hereby prior to the
 25 prisoner's being returned to the original place of

1 imprisonment pursuant to Article V(5) hereof, such
 2 indictment, information, or complaint shall not be of any
 3 further force or effect and the court shall enter an order
 4 dismissing the same with prejudice.

5 Article V

6 (1) In response to a request made under Article III or
 7 Article IV hereof, the appropriate authority in a sending
 8 state shall offer to deliver temporary custody of such
 9 prisoner to the appropriate authority in the state where
 10 such indictment, information, or complaint is pending
 11 against such person in order that speedy and efficient
 12 prosecution may be had. If the request for final disposition
 13 is made by the prisoner, the offer of temporary custody
 14 shall accompany the written notice provided for in Article
 15 III of this agreement. In the case of a federal prisoner,
 16 the appropriate authority in the receiving state shall be
 17 entitled to temporary custody as provided by this agreement
 18 or to the prisoner's presence in federal custody at the
 19 place for trial, whichever custodial arrangement may be
 20 approved by the custodian.

21 (2) The officer or other representative of a state
 22 accepting an offer of temporary custody shall present the
 23 following upon demand:

24 (a) proper identification and evidence of his
 25 authority to act for the state into whose temporary custody

1 the prisoner is to be given;

2 (b) a duly certified copy of the indictment,
3 information, or complaint on the basis of which the detainer
4 has been lodged and on the basis of which the request for
5 temporary custody of the prisoner has been made.

6 (3) If the appropriate authority shall refuse or fail
7 to accept temporary custody of said person or in the event
8 that an action on the indictment, information, or complaint
9 on the basis of which the detainer has been lodged is not
10 brought to trial within the periods provided by this
11 chapter, the appropriate court of the jurisdiction where the
12 indictment, information, or complaint has been pending shall
13 enter an order dismissing the same with prejudice and any
14 detainer based thereon shall cease to be of any force or
15 effect.

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

1 awaiting prosecution.

2 (5) At the earliest practicable time consonant with
3 the purposes of this agreement, the prisoner shall be
4 returned to the sending state.

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

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

19 (8) From the time that a party state receives custody
20 of a prisoner pursuant to this agreement until such prisoner
21 is returned to the territory and custody of the sending
22 state, the state in which the one or more untried
23 indictments, informations, or complaints are pending or in
24 which trial is being had shall be responsible for the
25 prisoner and shall also pay all costs of transporting,

1 caring for, keeping, and returning the prisoner. The
 2 provisions of this subsection shall govern unless the states
 3 concerned shall have entered into a supplementary agreement
 4 providing for a different allocation of costs and
 5 responsibilities as between or among themselves. Nothing
 6 herein contained shall be construed to alter or affect any
 7 internal relationship among the departments, agencies, and
 8 officers of and in the government of a party state or
 9 between a party state and its subdivisions as to the payment
 10 of costs or responsibilities therefor.

11 Article VI

12 (1) In determining the duration and expiration dates
 13 of the time periods provided in Articles III and IV of this
 14 agreement, the running of said time periods shall be tolled
 15 whenever and for as long as the prisoner is unable to stand
 16 trial, as determined by the court having jurisdiction of the
 17 matter.

18 (2) No provision of this agreement and no remedy made
 19 available by this agreement shall apply to any person who is
 20 adjudged to be mentally ill.

21 Article VII

22 Each state party to this agreement shall designate an
 23 officer who, acting jointly with like officers of other
 24 party states, shall promulgate rules and regulations to
 25 carry out more effectively the terms and provisions of this

1 agreement and who shall provide within and without the state
 2 information necessary to the effective operation of this
 3 agreement.

4 Article VIII

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

13 Article IX

14 This agreement shall be liberally construed so as to
 15 effectuate its purposes. The provisions of this agreement
 16 shall be severable, and if any phrase, clause, sentence, or
 17 provision of this agreement is declared to be contrary to
 18 the constitution of any party state or of the United States
 19 or the applicability thereof to any government, agency,
 20 person, or circumstances is held invalid, the validity of
 21 the remainder of this agreement and the applicability
 22 thereof to any government, agency, person, or circumstance
 23 shall not be affected thereby. If this agreement shall be
 24 held contrary to the constitution of any state party hereto,
 25 the agreement shall remain in full force and effect as to

SB 0257/02

1 the remaining states and in full force and effect as to the
2 state affected as to all severable matters."

3 NEW SECTION. Section 2. Effective date. This act is
4 effective on passage and approval.

-End-