

<b>NEBRASKA</b> Good Life. Great Mission. DEPT OF CORRECTIONAL SERVICES	<b>POLICY</b> <b>SPECIAL SERVICES – INTERSTATE AND INTRASTATE          DETAINERS, DISPOSITION AND UNTRIED CHARGES</b>		
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EFFECTIVE: December 31, 2020  
 REVISED: August 31, 2021  
 REVISED: October 31, 2022  
 REVISED: December 31, 2023

**SUMMARY OF REVISION/REVIEW**

"Inmate" changed to "Incarcerated Individual". "Staff" changed to "Team Member". "Institution"  
 changed to "Facility".

APPROVED:



Rob Jeffreys, Director  
 Nebraska Department of Correctional Services

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PURPOSE

To provide Nebraska Department of Correctional Services (NDCS) policy for incarcerated individuals and prosecutors to expedite any untried indictments, information, or complaints.

The Interstate Agreement of Detainers governs procedures for expediting untried indictments, information, or complaints pending within Nebraska courts or courts outside the State of Nebraska. Nebraska became signatory to the Interstate Agreement on Detainers in 1963 and enforced under Neb. Rev. Stat. §29-759.

Neb. Rev. Stat. §29-3801 through §29-3809 details procedures regarding the expedited disposition of untried indictments, information, or complaints pending in Nebraska courts.

PROCESS

I. INTERSTATE AGREEMENT ON DETAINERS

A. When an out-of-state prosecutor seeks to expedite the disposition of an untried charge lodged against a Nebraska incarcerated individual, the prosecutor may notify NDCS as a facility in which the incarcerated individual is serving a sentence by filing a detainer. The NDCS special services supervisor/designee, serving as detainer administrator, is responsible to ensure all detainees are appropriately entered and/or provided to NDCS records team members. Upon receipt of a detainer request from an out-of-state jurisdiction, the detainer administrator/designee will have four business days (32 hours) to enter a detainer into the Corrections Tracking System and the follow the steps listed below in accordance with the rules and regulations set forth in the Interstate Agreement on Detainers:

1. Special Services team members will inform the incarcerated individual of the detainer and serve *Form I Interstate Agreement on Detainers - Notice of Untried Indictment, Information or Complaint and Right to Request Disposition* (Attachment A) and *Form II Interstate Agreement on Detainers - Inmate’s Notice of Place of Imprisonment and Request for Disposition of Indictment, Information or Complaints* (Attachment B). The Special Services team member/designee will have five business days to serve the detainer to the incarcerated individual from the date of detainer entry onto the Corrections Tracking System.
2. Team members will inform the incarcerated individual that they or the prosecutor may request disposition of charges under the Interstate Agreement on Detainers.
3. When a prosecutor makes a request for temporary custody, the incarcerated individual should be informed that they may oppose this request by notifying the Governor in writing that they object to transfer to the requesting state (*Cuyler vs. Adams*, 449 U. S. 433 (1981)).
4. The Governor has 30 days to review the objection to the transfer to the requesting state.
5. The incarcerated individual should be informed that they have the right to file a Writ of Habeas Corpus in District Court requesting a pre-transfer hearing prior to being removed to the demanding state. The incarcerated individual may, however, go before a court of record and waive extradition to the demanding State.

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B. Incarcerated Individual's Request

1. An incarcerated individual may request to expedite the disposition of untried out-of-state charges, when a detainer has been filed. To do so, an incarcerated individual must send a request for disposition of untried charges to the prosecutor and court having jurisdiction by certified mail with return receipt requested. Upon receipt of the registered request, a prosecutor has 180 days to bring the incarcerated individual to trial on the charges specified, dismiss the charges, or request a continuance from the court. If the incarcerated individual makes a request for disposition to a prosecutor/court outside of Nebraska, they voluntarily waive extradition to the receiving state, including that individual must be returned to that state to serve any sentence imposed. When serving a detainer, team members will advise the incarcerated individual they will temporarily be in the custody of the receiving state, and they will be returned upon completion of the court proceedings. The incarcerated individual should be instructed if they want to make a request for disposition of charges under the IAD, they should sign *Form I Interstate Agreement on Detainers - Notice of Untried Indictment, Information or Complaint and Right to Request Disposition* (Attachment A) and *Form II Interstate Agreement on Detainers - Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictment, Information or Complaints* (Attachment B). The incarcerated individual may decline to request final disposition at the time of service by refusing to sign the Interstate Agreement on Detainers (IAD) forms. A second team member will witness the refusal by signing the IAD forms along with the Special Services staff serving the detainer. If the incarcerated individual refuses to sign *Form II Interstate Agreement on Detainers - Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictment, Information or Complaints* (Attachment B) when served, the incarcerated individual can later write to *Special Services Supervisor, Special Services Unit, P.O. Box 94661, Lincoln, Nebraska 68509-4661* and indicate that they are now interested in doing so. *Form I Interstate Agreement on Detainers - Notice of Untried Indictment, Information or Complaint and Right to Request Disposition* (Attachment A) and *Form II Interstate Agreement on Detainers - Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictment, Information or Complaints* (Attachment B) will be prepared and served to the incarcerated individual for signature.

Once the incarcerated individual signs *Form II Interstate Agreement on Detainers - Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictment, Information or Complaints* (Attachment B) indicating their intent to request final disposition, the Special Services Unit will prepare a trial request including: Cover letter, *Form III Interstate Agreement on Detainers – Certificate of Inmate Status* (Attachment C); and *Form VI Interstate Agreement on Detainers - Offer to Deliver Temporary Custody* (Attachment D) for proper signatures and disposition.

The forms and cover letter distributed to the prosecutor and the court in the receiving state must be sent certified mail, return receipt requested.

All in-state untried charges must be satisfied prior to the Incarcerated Individuals being permitted to face untried charges out of state. (Neb. Rev. Stat. §29-759)

2. Once the prosecutor of the receiving state has received the request, they will make the decision as to whether to return the incarcerated individual for trial, dismiss the

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Complaint, Information, or Indictment, or request a continuance from the court. If the prosecutor proceeds with charges, they will forward to the facility, agreement administrator of the sending state, and incarcerated individual, *Form VII Interstate Agreement on Detainers - Prosecutor's Acceptance of Temporary Custody Offered in Connection with a Prisoner's Request for Disposition of a Detainer* (Attachment G) showing their intention to return the incarcerated individual for trial.

Prior to the incarcerated individual's transfer to the receiving state, the prosecutor should complete the *Form VI Interstate Agreement on Detainers - Evidence of Agent's Authority to Act for Receiving State* (Attachment F) and forward all copies of the same to their state's agreement administrator. The agreement administrator in the receiving state should then complete and distribute IAD Form VI accordingly.

With a minimum of five business day's advance notice of the pick-up date, the prosecutor or sheriff's office shall send to the detainer administrator via U.S. Mail or facsimile a court approved transport order. The transport order will identify the incarcerated individual by name and registration number, the transport agent, purpose of the proceeding, date of hearing and an order to hold the incarcerated individual in custody without bond and to return the incarcerated individual to the facility after the proceeding or upon disposition of the case. The agreement administrator will then review the file and determine if there are any conflicts with other detainees. The transport order shall be forwarded by Special Services Division to the facility records manager advising them that the incarcerated individual is cleared to be released to the designated agent. If a conflict is identified at the facility level, i.e. the incarcerated individual is scheduled to transfer to another facility, is medically restricted from travel, or a facility travel order is scheduled at the same time, etc., the facility records manager will notify the detainer administrator immediately. The detainer administrator will then coordinate an alternate pick up date with the prosecutor. Proper identification of agents shall be required.

NDCS incarcerated individuals shall be released only to an appointed agent who is a certified law enforcement officer acting in their official agency capacity. The use of private transportation companies is prohibited. The agent's identity will be verified by checking photo identification before releasing the incarcerated individual to the agent(s).

3. When the department mails an incarcerated individual's request for disposition of charges in another state, the request should be made to all jurisdictions having charges on file in that state. All prosecutors in the receiving state who intend to prosecute their cases will use *Form VII Interstate Agreement on Detainers - Prosecutor's Acceptance of Temporary Custody Offered in Connection with a Prisoner's Request for Disposition of a Detainer* (Attachment G).
4. When the incarcerated individual is returned from the receiving state, the prosecutor involved should complete and send *Form IX Interstate Agreement on Detainers - Prosecutor's Report on Disposition of Charges* (Attachment I).

C. Prosecutor's Request

1. Upon receipt of *Form V Interstate Agreement on Detainers - Request for Temporary Custody* (Attachment E), from a prosecutor outside of Nebraska, the

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incarcerated individual should be interviewed and advised that a demand for their temporary custody has been made upon the State of Nebraska.

2. The incarcerated individual should be served with *Form II Interstate Agreement on Detainers - Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictments, Information or Complaints* (Attachment B) outlining the options open to their under the Detainer Act.
  - a. The incarcerated individual may execute *Form II Interstate Agreement on Detainers - Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictments, Information or Complaints* (Attachment B), after which the agreement administrator will notify the demanding state the incarcerated individual is available to be taken into temporary custody.
  - b. The incarcerated individual has a right to petition the Governor, requesting the governor deny custody to the demanding state. Should the incarcerated individual desire to exercise this right, they should forward a letter to *Governor of Nebraska, State Capitol Building, Lincoln, Nebraska 68509*.
  - c. The incarcerated individual has the right to be brought before the court of record for the purpose of being informed of the charges against him/her; that the incarcerated individual has a right to legal counsel, and if at that time the incarcerated individual states they wishes to test the legality of the detainer, the court shall set a time and place for the hearing.

During the Habeas hearing, the court will not inquire into an incarcerated individual's guilt or innocence. The court will only consider:

- 1) That the information, complaint or indictment substantially charges the person demanded with having committed a crime under the law of the demanding state.
- 2) That the documents submitted by the demanding state are in legal form.
- 3) That the identity of the incarcerated individual has been established by the demanding state.

## II. STEPS

- A. If the incarcerated individual elects to sign *Form II Interstate Agreement on Detainers - Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictment, Information or Complaints* (Attachment B), the Special Services Unit will prepare *Form III Interstate Agreement on Detainers - Certificate of Inmate Status* (Attachment C) and *Form IV Interstate Agreement on Detainers - Offer to Deliver Temporary Custody* (Attachment D) along with a cover letter to the prosecutor of the demanding court by certified mail, return receipt requested.

The prosecutor should return *Form VI Interstate Agreement on Detainers - Evidence of Agent's Authority to Act for Receiving State* (Attachment F). The same procedure will be used for *Form VI Interstate Agreement on Detainers - Evidence of Agent's Authority to Act*

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for Receiving State (Attachment F) as previously outlined under Incarcerated individual's Request.

When the incarcerated individual is returned from the demanding state, the prosecutor involved should complete and return *Form IX Interstate Agreement on Detainers - Prosecutor's Report on Disposition of Charges* (Attachment I).

- B. If the incarcerated individual elects to file a Writ of Habeas Corpus, the prosecutor in the demanding state and the governor of the sending state should be notified immediately. The prosecutor of the demanding state should be sent a cover letter stating incarcerated individual's intention, and *Form III Interstate Agreement on Detainers – Certificate of Inmate Status* (Attachment C) by certified mail, return receipt requested. The governor of the sending state should be sent a cover letter with the following attachments, verifying the demanding state's request for temporary custody: court commitments, warrant of arrest, information, or complaints, *Form V Interstate Agreement on Detainers - Request for Temporary Custody* (Attachment E) and *Form III Interstate Agreement on Detainers – Certificate of Inmate Status* (Attachment C).

The Nebraska Department of Justice (attorney general's office) should arrange to have the incarcerated individual brought before the district court for a pre-transfer hearing prior to their removal to the demanding state.

Once the governor and the court have granted the demanding state's request for temporary custody, *Form IV Interstate Agreement on Detainers - Offer to Deliver Temporary Custody* (Attachment D) should be prepared and delivered to the prosecutor of the demanding state, with the following attachments:

1. Governor's authorization letter from the sending state.
2. Court order from the district court.

Unless previously received, the prosecutor should then send *Form VI Interstate Agreement on Detainers - Evidence of Agent's Authority to Act for Receiving State* (Attachment F) and forward the same to his/her state's IAD agreement administrator for completion and distribution.

When a prosecutor from a demanding state has made a request for an incarcerated individual under Article IV, any other prosecutors having charges in that state should use *Form VIII Interstate Agreement on Detainers - Prosecutor's Acceptance of Temporary Custody Offered in Connection with Another Prosecutor's Request for Disposition of a Detainer* (Attachment H). All existing detainees from the demanding state must be disposed of prior to subject's return.

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

### III. DISPOSITION AND UNTRIED CHARGES, IN-STATE CHARGES

- A. The prosecutor responsible for pending indictments, information, or complaints lodged against an in-state prisoner is not required to file a detainer. A detainer needs to be filed only if the prosecutor elects to seek temporary custody or custody or availability of the prisoner. A detainer is also not required for a prisoner to assert their right to speed trial.

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(Neb. Rev. Stat. §29-3804, §29-3803. *State v. Ebert*, 235 Neb. 330, 455 N.W.2d 165 (1990))

Upon receipt of a detainer involving an untried indictment, information or complaint, The detainer administrator/designee will have four business days to enter a detainer into the Corrections Tracking System.

The detainer administrator/designee will inform the incarcerated individual of the detainer and serve *Form I: Disposition of Untried Charges - Notice of Untried Indictment, Information or Complaint and of Right to Request Disposition* (Attachment J), and *Form II: Disposition of Untried Charges - Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictments, Information and Complaints* (Attachment K). The Special Services staff member/designee will have five business days to serve the detainer to the incarcerated individual from the date of detainer entry onto the Corrections Tracking System and will make certain that the incarcerated individual fully understands that both they and the prosecutor may request disposition of charges under the Statutes.

1. Incarcerated Individual's Request

A request by an incarcerated individual for disposition of charges must be mailed by certified mail, return receipt to the prosecutor and court having jurisdiction over the charges. Upon receipt of the registered request, a prosecutor has 180 days to bring said incarcerated individual to trial on the charges specified, dismiss them, or request a continuance from the court. The incarcerated individual is on temporary custody to the county having charges against their and that they will be returned upon completion of court proceedings. The incarcerated individual may decline to request final disposition at the time detainer *Form II: Disposition of Untried Charges - Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictments, Information and Complaints* (Attachment K) is presented by refusing to sign *Form II: Disposition of Untried Charges - Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictments, Information and Complaints* (Attachment K). A second staff member will witness the refusal by signing *Form II: Disposition of Untried Charges - Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictments, Information and Complaints* (Attachment K) along with the Special Services staff serving the detainer. The incarcerated individual should be instructed that if they decides at a later date to make a request for disposition of the charges, they should notify the agreement administrator, special services unit, using an incarcerated interview request form.

Once the incarcerated individual signs *Form II: Disposition of Untried Charges - Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictments, Information and Complaints* (Attachment K), the Special Services Unit will prepare *Form III: Disposition of Untried Charges - Certificate of Incarcerated individual Status* (Attachment L), *Form IV: Disposition of Untried Charges - Offer to Deliver Temporary Custody* (Attachment M), or *Form V: Disposition of Untried Charges - Request for Temporary Custody* (Attachment N). The forms and cover letter which are distributed to the prosecutor and the court must be sent by certified mail, return receipt requested.

Once the prosecutor has received the request, a decision will be made whether to return said incarcerated individual for trial, dismiss the complaint, or request a

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continuance from the court. If the prosecutor proceeds with charges, they will forward to the agreement administrator *Form VII: Disposition of Untried Charges - Prosecutor's Acceptance of Temporary Custody Offered in Connection with a Prisoner's Request for Disposition of a Detainer* (Attachment O) showing the intention to return said incarcerated individual for trial.

With a minimum of five business day's advance notice of the pick-up date, the prosecutor or sheriff's office shall send to the detainer administrator via U.S. Mail or facsimile a court approved transport order. The transport order will identify the incarcerated individual by name and registration number, the transport agent, purpose of the proceeding, date of hearing and an order to hold the incarcerated individual in custody without bond and to return the incarcerated individual to the facility after the proceeding or upon disposition of the case. The agreement administrator will then review the file and determine if there are any conflicts with other detainees. The transport order shall be forwarded by Special Services to the facility records manager advising them that the incarcerated individual is cleared to be released to the designated agent. If a conflict is identified at the facility level, i.e. the incarcerated individual is scheduled to transfer to another facility, is medically restricted from travel, or a facility travel order is scheduled at the same time, etc., the facility records manager will notify the detainer administrator immediately. The detainer administrator will then coordinate an alternate pick up date with the Prosecutor. Proper identification of agents shall be required.

Prior to the incarcerated individual's return from the receiving county, the prosecutor involved should complete and forward to the detainer administrator the *Form IX: Disposition of Untried Charges - Prosecutor's Report on Disposition of Charges* (Attachment P).

Escape from custody by a prisoner subsequent to execution of a request for final disposition of any untried indictment, information, or complaint shall void the request.

**2. Prosecutor's Request**

The Prosecutor in a city or county in which an untried Indictment, Information, or Complaint is pending shall be entitled to have temporary custody of a prisoner, against whom the Prosecutor/Sheriff has lodged a detainer, upon presentation of a court approved Order of Transport to the Special Services Unit.

Upon the return of the prisoner from court, the Prosecutor should complete *Form IX: Disposition of Untried Charges - Prosecutor's Report on Disposition of Charges* (Attachment P) to the agreement administrator of NDCS.

**3. Transportation Agents**

Only certified law enforcement officers or correctional officers acting in their official capacity will be accepted as agents. The use of private transportation companies is prohibited.

**4. No provision of sections Neb. Rev. Stat. §29-3801 to §29-3809 and no remedy made available by sections Neb. Rev. Stat. §29-3801 to §29-3809 shall apply to any person who is adjudged to be mentally ill.**



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## REFERENCE

- I. STATUTORY REFERENCE AND OTHER AUTHORITY
  - A. Neb. Rev. Stat. §29-759 to §29-765, §29-3801 through §29-3809
  - B. NAEO Manual for Interstate Agreement on Detainers, published 1989
  - C. *Cuyler vs. Adams*, 449 U. S. 433 (1981)
  - D. *State v. Ebert*, 235 Neb. 330, 455 N.W.2d 165 (1990)
- II. NDCS POLICIES – None noted
- III. ATTACHMENTS
  - A. Form I: Interstate Agreement on Detainers - *Notice of Untried Indictment, Information or Complaint and Right to Request Disposition*
  - B. Form II: Interstate Agreement on Detainers - *Inmate’s Notice of Place of Imprisonment and Request for Disposition of Indictment, Information or Complaints*
  - C. Form III: Interstate Agreement on Detainers – *Certificate of Inmate Status*
  - D. Form IV: Interstate Agreement on Detainers - *Offer to Deliver Temporary Custody*
  - E. Form V: Interstate Agreement on Detainers - *Request for Temporary Custody*
  - F. Form VI: Interstate Agreement on Detainers - *Evidence of Agent’s Authority to Act for Receiving State*
  - G. Form VII: Interstate Agreement on Detainers - *Prosecutor’s Acceptance of Temporary Custody Offered in Connection with a Prisoner’s Request for Disposition of a Detainer*
  - H. Form VIII: Interstate Agreement on Detainers - *Prosecutor’s Acceptance of Temporary Custody Offered in Connection with Another Prosecutor’s Request for Disposition of a Detainer*
  - I. Form IX: Interstate Agreement on Detainers - *Prosecutor’s Report on Disposition of Charges*
  - J. Form I: Disposition of Untried Charges, Nebraska Intrastate Detainers - *Notice of Untried Indictment, Information or Complaint and of Right to Request Disposition*
  - K. Form II: Disposition of Untried Charges, Nebraska Intrastate Detainers - *Inmate’s Notice of Place of Imprisonment and Request for Disposition of Indictments, Information or Complaints*
  - L. Form III: Disposition of Untried Charges, Nebraska Intrastate Detainers - *Certificate of Incarcerated individual Status*

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- M. Form IV: Disposition of Untried Charges, Nebraska Intrastate Detainers - *Offer to Deliver Temporary Custody*
  - N. Form V: Disposition of Untried Charges, Nebraska Intrastate Detainers - *Request for Temporary Custody*
  - O. Form VII: Nebraska Instate Detainer Act – *Prosecutor’s Acceptance of Temporary Custody Offered in Connection With A Prisoner’s Request for Disposition of A Detainer*
  - P. Form IX: Disposition of Untried Charges - *Prosecutor’s Report on Disposition of Charges*
- IV. AMERICAN CORRECTIONAL ASSOCIATION (ACA) – None noted