SM-90 PROCEDURE TO FOLLOW IN ADVISING A PRISONER OF RIGHTS UNDER THE UNIFORM DETAINER ACT

WHEN ANOTHER JURISDICTION[1] FILES A WRITTEN REQUEST FOR TEMPORARY CUSTODY OR AVAILABILITY OF A PRISONER WITH THE WARDEN OF AN INSTITUTION (OR WITH THE SHERIFF IN CHARGE OF A COUNTY JAIL),[2] THE PRISONER IS TO BE TAKEN FORTHWITH BEFORE A JUDGE OF A COURT OF RECORD.[3] THE JUDGE SHOULD EXAMINE THE REQUEST FOR A TEMPORARY CUSTODY TO ASSURE THAT IT HAS BEEN DULY APPROVED, RECORDED, AND TRANSMITTED BY THE COURT HAVING JURISDICTION OVER THE INDICTMENT, INFORMATION OR COMPLAINT UPON WHICH THE REQUEST IS BASED.[4]

IF THE REQUEST IS IN PROPER FORM, THE COURT SHOULD ADVISE THE PRISONER AS FOLLOWS:

A request for your temporary custody or availability under Article IV of the Uniform Detainer Act was received on (date request received by warden or sheriff) from (name of officer and jurisdiction). You are charged with committing the offense of (name of offense), on (date offense committed), in (site of offense). (SPECIFY ALL OFFENSES LISTED IN THE REQUEST.) The request for temporary custody means that (receiving state) wants to have you returned to stand trial on the charge(s) I have just described to you. If you are returned to (receiving state), you may also be tried on other charges upon which detainers have been filed.[5] Trial must be commenced within 120 days of your arrival in (receiving state), unless a continuance has been granted in open court in your presence or the presence of your counsel.[6] After the charges are resolved, you will be returned to Wisconsin to complete your present sentence.

Authorities from (receiving state) will be able to pick you up after 30 days have elapsed from the date the request was received unless the governor of Wisconsin disapproves the request within that period of time. You have the right to petition the governor to ask that he disapprove the request.[7] You may petition the governor by writing the following person:

Pardon and Extradition Counsel

Office of the Governor

State Capitol Building

Madison, Wisconsin 53702

You may not oppose your delivery to the authorities from (receiving state) on the ground that the governor has not affirmatively consented to or ordered the delivery.[8]

You also have the right to contest your delivery in court[9] and to be represented by an attorney. If you cannot afford to hire an attorney, one will be appointed for you. If you wish to contest the matter in court, the only issues will be the sufficiency of the request for temporary custody and your identification as the person sought.[10] Your guilt or innocence on the criminal charge(s) will not be inquired into. If you wish to contest your delivery in court you must request a hearing promptly; the hearing must be held within 30 days after the request for temporary custody was received.

Do you understand your rights as I have just described them to you?

And do you understand that if you wish to contest your delivery to (receiving state), either by petitioning the governor or by requesting a court hearing, or both, the matter must be resolved within 30 days after the request for temporary custody was received, which will be (specify date)?

[END OF ADVICE TO PRISONER]

IF THE PRISONER REQUESTS COUNSEL, COUNSEL SHOULD BE APPOINTED IMMEDIATELY.

IF THE PRISONER REQUESTS A COURT HEARING TO CONTEST DELIVERY, A DATE SHOULD BE SET WITHIN THE 30-DAY PERIOD FOLLOWING THE RECEIPT OF THE REQUEST.

IF THE PRISONER INDICATES THAT HE OR SHE DOES NOT WISH TO CONTEST DELIVERY PURSUANT TO THE REQUEST FOR TEMPORARY CUSTODY, THE COURT SHOULD EMPHASIZE THAT NO FURTHER LEGAL PROCEEDINGS WILL BE REQUIRED AND THAT THE PRISONER WILL BE MADE AVAILABLE TO THE AUTHORITIES FROM THE RECEIVING STATE AT THE END OF THE 30-DAY PERIOD.[11]

IF THE PRISONER INDICATES THAT HE OR SHE DOES NOT KNOW WHAT TO DO, EMPHASIZE THAT THE PRISONER HAS THE RIGHT TO CONSULT WITH COUNSEL, AND THE RIGHT TO HAVE COUNSEL APPOINTED IF INDIGENT, TO ASSIST IN MAKING THE DECISION.

COMMENT

SM-90 was originally published in 1980. This revision involved nonsubstantive editorial changes and updated the comment. It was approved by the Committee in February 1998.

The procedures described in this Special Material are required by Wis. Stat. § 976.06 created by Chapter 158, Laws of 1975. The statute is designed to remedy the deficiencies in the Uniform Detainer Act identified by the Wisconsin Supreme Court in State ex rel. Garner v. Gray, 55 Wis.2d 574, 201 N.W.2d 163 (1972). In Garner, the court held the Uniform Detainer Act unconstitutional because it failed to require that the prisoner be advised of his rights to contest his delivery under the detainer by petitioning the governor and by going to court. To remedy the defect, the court required that prisoners be taken

before a judge to be advised of these rights. Section 976.06 is modelled after § 976.03(10) of the Uniform Criminal Extradition Act.

The usual sequence of events leading up to this court appearance begins with the receipt by the custodian (sheriff, prison warden) of what is broadly called a detainer. A detainer, also called a "hold" or "hold order," is a notice of a criminal charge pending against a prison inmate, given by law enforcement or prosecuting officials to prison authorities to insure that after the completion of the prisoner's present sentence he will be held until turned over to the notifying authorities for prosecution. The detainer usually consists of a letter or other written document accompanied by a copy of the outstanding warrant, information, or indictment. (Jacob and Sharma, "Justice After Trial: Prisoners' Need For Legal Services In The Criminal-Correctional Process," 18 Kansas L. Rev. 495, 579 (1970).)

Out of recognition that the existence of a detainer can have a detrimental effect on such aspects of the prisoner's confinement as custody classification, parole eligibility, work-release eligibility, and parole planning, many states, including Wisconsin, have adopted the Uniform Detainer Act (Wis. Stat. § 976.05). (A list of states which have adopted the Act follows as Appendix A.) The Act's purpose is to encourage the expeditious and orderly disposition of charges outstanding against a prisoner and to determine the proper status of any and all detainers based on untried indictments, information or complaints (' 976.05(1) Article I). Both prisoners and prosecuting authorities may initiate proceedings under the Act, and different procedures apply depending upon who initiates the action.

The Act requires that upon receipt of a detainer, the warden promptly inform the prisoner of its source and contents. The prisoner must also be informed of the right to request final disposition of the charge on which the detainer is based. If the prisoner makes that request, 976.05(3) [Article III(a)] of the Act requires that the charge be dismissed if not brought to trial within 180 days.

The Act also provides a procedure enabling the charging jurisdiction to gain custody of the prisoner for the purpose of bringing him to trial. This procedure is described in 976.05(4) [Article IV] of the Act and is initiated by the presentation of a written request for temporary custody to the proper authorities in the state where the prisoner is incarcerated. The request is presented after a detainer has been lodged against the prisoner and it is the receipt of the request for temporary custody that triggers the court appearance described in this Special Material.

State v. Aukes, 192 Wis.2d 338, 531 N.W.2d 382 (Ct. App. 1995), discusses the two different procedures available under the Interstate Agreement on Detainers. Under Article III [' 976.05(3)] a prisoner may request a final disposition of charges pending in another state. The prisoner must be brought to trial within 180 days after the prosecutor receives the prisoner's request. Under Article IV [' 976.05(4)], an officer of a jurisdiction in which charges are pending can request to have a prisoner returned to that jurisdiction for trial. A prisoner returned under this provision must be tried within 120 days. In Aukes, the court of appeals concluded that the 180-day limit applied to a person returned to Wisconsin from Colorado. The court also found that the 180-day limit was tolled during the time that an appeal of a suppression order was pending and that it was ultimately waived when the defendant agreed to a trial date set after the limit would have expired. That waiver can occur by conduct; express waiver on the record is not necessary.

When another jurisdiction makes a request under Article IV, the prisoner is to be brought before a court "forthwith." § 976.06. This is the court appearance addressed by this Special Material. The prisoner has the right to request a hearing to test the legality of the request and the hearing is to be held

within 30 days. If a hearing is not held within the 30-day period, the original request or detainer is dismissed. State v. Sykes, 91 Wis.2d 436, 283 N.W.2d 446 (Ct. App. 1979). However, dismissal of procedurally defective detainers does not bar successive requests. In the Matter of Custody of Aiello, 166 Wis.2d 27, 479 N.W.2d 178 (Ct. App. 1991). The new request must itself satisfy the requirements of the Act, including it being approved by the court in the jurisdiction filing the request. State ex rel. Kerr v. McCaughtry, 183 Wis.2d 54, 515 N.W.2d 276 (Ct. App. 1994).

1. In the Uniform Detainer Act (Wis. Stat. § 976.05) and in this Special Material, the state requesting the custody of the prisoner is referred to as the "receiving state." Wisconsin is the "sending state." See § 976.05(2) Article II(a) and (b).

2. The Act applies to "one who has entered upon a term of imprisonment in a penal or correctional institution." (Section 976.05(3), Article III(a).) It is usually applied to inmates of the state prisons, but could also be invoked with regard to county jail inmates. The Act does not apply to persons adjudged to be mentally ill (' 976.05(6), Article VI(b)). A separate compact exists for juveniles, see Wis. Stat. § 938.991.

3. It may be necessary for the court to issue a writ of habeas corpus as prosequendum or ad testificandum to allow the warden or other custodian to bring the prisoner from the place of his confinement to the court.

4. See § 976.05(1), Article IV(a). A sample "Request for Temporary Custody" follows as Appendix B. It is the suggested Agreement on Detainers Form V, see Handbook on Interstate Crime Control, p. 106.

5. Section 976.05(4), Article IV(b) provides that upon receiving a request for temporary custody, the warden or other custodian shall furnish the requesting officer with a certificate specifying the term of the prisoner's commitment, the time already served, the time remaining to be served, the amount of good time earned, the parole eligibility date, and any parole board decisions. Such a certificate is also to be sent to any other officials in the receiving state who have lodged detainers against the prisoner, thus alerting those officials to the possible availability of the prisoner. Therefore trial on other charges could result when the prisoner is returned to the receiving state.

6. Section 976.05(4), Article IV(c).

7. Section 976.05(4), Article IV(a) states in part:

> . . . and that there shall be a period of 30 days after receipt by the appropriate authorities before the request is honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability either upon the governor's own motion or upon motion of the prisoner.

Garner, supra, held, and new § 976.06 requires, that the prisoner be advised of the right to petition the governor.

8. Section 976.05(4), Article IV (d).

9. The decision in Garner, supra, required that the prisoner be advised of his right to contest

delivery under the detainer, "either by petitioning the governor or by going to court." (Garner, supra, at 585.) Section 976.06 requires that the prisoner be advised of both rights and says that the court hearing scheduled if the prisoner wishes to contest the request in court must also be set within the 30-day time limit applicable to the governor's denial of the request (see note 6, supra). There is no indication whether a prisoner may exercise both rights in a single case or must elect between petitioning the governor and contesting the request in court.

10. Section 976.06 was modelled after § 976.03(10) of the Uniform Criminal Extradition Act. Therefore the issues cognizable upon habeas corpus in an extradition proceeding may offer guidance as to the issues the court can consider in the detainer case where the prisoner wishes to contest the detainer. The issues which can be raised by habeas corpus in an extradition case have been identified by the Wisconsin Supreme Court as follows:

1. Are the papers in order and properly authenticated?
2. Was a crime substantially charged under the law of the demanding state?
3. Is the petitioner the person named in the papers (identity)?
4. Was the petitioner present in the demanding state at the time of the alleged offense (fugitive status)?

State v. Ritter, 74 Wis.2d 227, 246 N.W.2d 552 (1976).

Each of these four categories, except fugitive status, should be open to inquiry in the detainer case. Guilt or innocence on the underlying charge can only be inquired into insofar as it relates to one of the other four issues. The receiving state's motive for demanding the prisoner's return is also irrelevant. (Handbook on Interstate Crime Control, pp. 147-154.)

Whether or not courts in the sending state can consider constitutional claims is open to question. On the one hand, the Wisconsin Supreme Court has held that trial courts in habeas corpus proceedings can "examine into constitutional questions affecting the legality of the arrest in this state for extradition at least where constitutional standards are shown not to have been complied with on the face of the documents." State ex rel. Foster v. Uttech, 31 Wis.2d 664, 671, 143 N.W.2d 500 (1966). The Uttech case has been recognized as a limited exception to the general rule that "whether correct constitutional procedures had been followed by the demanding state in obtaining the arrest of the defendant was an issue to be raised in the demanding state, not the asylum state." State v. Hughes, 68 Wis.2d 662, 670, 229 N.W.2d 655 (1975). The decision in Ritter, supra, limited the application of Uttech to the case where the alleged constitutional defect appears on the face of the papers. Where defects in the receiving state's procedures are alleged, Ritter suggests that the following practical test be applied: "Can the defects in the procedures of the demanding state be more easily raised and adequately handled in the demanding state after the accused is returned or is the decision one which the asylum state can make with comparative ease and with expertise equal to that of the demanding state, thus saving the accused the expense, inconvenience and jeopardy involved in litigating the issue in the demanding state?" (Ritter, supra at page 237.)

With respect to a specific defect, trial within 180 days as guaranteed by the Uniform Detainer Act, the Wisconsin Supreme Court has held that the claim that a prisoner was not afforded this right may not be considered in the sending state but must be decided by the courts in the receiving state. State ex rel. Garner v. Gray, 59 Wis.2d 323, 208 N.W.2d 161 (1973).

11. The court may also wish to advise the custodian of the prisoner that if the prisoner does not contest delivery, or if the governor takes no action and the prisoner does not challenge delivery in court, that the custodian may surrender the prisoner after the expiration of the 30-day period to the appropriate representative of the receiving state who shall present the following:

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

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

(Section 976.05(5), Article V(b).)