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Interstate Agreement on Detainers

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LEGISLATION

INTERSTATE AGREEMENT ON DETAINERS

The New York State legislature has recently implemented the right of a convict to a speedy trial of charges still outstanding against him, and has adopted an agreement which, if enacted by other states, will extend this right to a convict incarcerated in one state with charges against him in another.[1]

The Federal Constitution[2] and many state constitutions[3] guarantee an accused the right to a speedy trial. Most states which lack this constitutional guarantee protect this right by statute.[4] While most jurisdictions impose upon the accused the burden of insisting upon his rights,[5] once the accused does so, the burden is then upon the state to try him with all due speed.[6] Many states provide by statute for dismissal of the indictment if trial is not held within certain periods of time.[7]

The right to a speedy trial is usually recognized when the accused is serving a prison term in the same jurisdiction for a previous offense.[8] However, when the accused is a convict in another state, or in a federal prison, the indicting state has no absolute right to the custody of the other sovereign's prisoner, and a delay of the trial until he has served his sentence in the other state is usually held to be a reasonable delay.[9] Furthermore, this delay has been held rea-

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[1] N.Y. CODE CRIM. PROC. §§ 669-a, 669-b (Supp. 1957).

[2] U.S. CONST. amend. VI.

[3] See, *e.g.*, ALA. CONST. art. 1, § 6; CAL. CONST. art. 1, § 13; MINN. CONST. art. 1, § 6.

[4] See, *e.g.*, IDAHO CODE ANN. § 19-106 (1948); NEV. REV. STAT. § 169.160; N.Y. CODE CRIM. PROC. § 8.

[5] See Pietch v. United States, 110 F.2d 817 (10th Cir.), *cert. denied*, 310 U.S. 648 (1940); McCandless v. District Court, 245 Iowa 599, 61 N.W.2d 674 (1953); Goss v. State, 161 Tex. Crim. App. 51, 274 S.W.2d 697 (1954). *But see* People v. Prosser, 309 N.Y. 353, 130 N.E.2d 891 (1955); People v. Perry, 196 Misc. 922, 96 N.Y.S.2d 517 (County Ct. 1949).

[6] See Flagg v. State, 11 Ga. App. 37, 74 S.E. 562 (1912); McCandless v. District Court, note 5 *supra*.

[7] See, *e.g.*, COLO. REV. STAT. ANN. § 39-7-12 (1953); IOWA CODE ANN. § 795.2 (1950); N.Y. CODE CRIM. PROC. § 668.

[8] See, *e.g.*, Frankel v. Woodrough, 7 F.2d 796 (8th Cir. 1925); People v. Prosser, 309 N.Y. 353, 130 N.E.2d 891 (1955); State *ex rel.* Moreau v. Bond, 114 Tex. 468, 271 S.W. 379 (1925); State v. Keefe, 17 Wyo. 227, 98 Pac. 122 (1908).

[9] See, *e.g.*, Nolan v. United States, 163 F.2d 768 (8th Cir. 1947); *Ex parte* Schechtel, 103 Colo. 77, 82 P.2d 762 (1938); Raine v. State, 143 Tenn. 168, 226 S.W. 189 (1920).

sonable even where the prosecuting state had made no attempt to obtain custody of the accused from the incarcerating state.[10] It is this situation, and its undesirable results, which the Interstate Agreement on Detainers [11] is designed to remedy.

The Agreement provides procedures whereby a convict in one party state may be expeditiously tried on charges outstanding in another party state, at the instance of *either* the convict or the prosecuting state. This allows a convict in state *X* to precipitate the disposition of untried charges against him in state *Y*, both states being, of course, parties to the Agreement. The basic procedure is this: The convict directs a request for trial to state *Y*; state *Y* may then take temporary custody of him for trial.[12] If state *Y* does not actually try him within 180 days after his request, however, the court having jurisdiction of the charges in state *Y* will, unless the prosecuting officer shows good cause for the delay, dismiss the indictment.[13] This dismissal affects *all* charges outstanding against the convict in state *Y*,[14] even those of which he had not been informed. Nor would it seem that the accused must utilize the procedures of the Agreement. Since under the Agreement the prosecutor has the power to request, and may ordinarily expect to get, custody of the accused from the other state,[15] no longer may the fact that the accused is incarcerated there negate his right to a speedy trial within the next term of court.[16]

The Agreement specifically withholds the benefit of its provisions from one who has been adjudged mentally ill.[17] Since one who is mentally ill cannot conduct his defense and therefore cannot be tried,[18] he is not allowed to take advantage of a law under which failure to try him might result in dismissal of the charges against him.

Section 669-a of the Code of Criminal Procedure is, in effect, an intrastate counterpart of the Agreement. One who is presently

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[10] See *Ex parte* Schechtel, note 9 *supra*; Raine v. State, note 9 *supra*.

[11] N.Y. CODE CRIM. PROC. § 669-b (Supp. 1957). "An interstate detainer is a request, usually in the form of a warrant or hold order, to detain a fugitive from justice wanted by the demanding state . . . when the fugitive is already in custody on a different charge in the state to which the request is directed. . . ." See Note, 48 COLUM. L. REV. 1190-91 (1948). The usual result of a detainer is that the requesting state will be notified before the prisoner's release. The Agreement on Detainers applies only when a detainer has actually been lodged against a prisoner.

[12] N.Y. CODE CRIM. PROC. § 669-b, art. III (Supp. 1957); *id.* art. V(a). While the convict is travelling to and from trial, and while he is being tried, his sentence continues to run. *Id.* art. V(f).

[13] *Id.* art. V(c).

[14] *Id.* art. III(d).

[15] *Id.* art. IV. The governor of the incarcerating state may disapprove the request, however. *Id.* art. IV(a).

[16] *Cf.* N.Y. CODE CRIM. PROC. § 668; People v. Peters, 198 Misc. 956, 101 N.Y.S.2d 755 (County Ct. 1951).

[17] N.Y. CODE CRIM. PROC. § 669-b, art. VI(b) (Supp. 1957).

[18] Freeman v. People, 4 Denio 9 (N.Y. Sup. Ct. 1847); *In re* Smith, 25 N.M. 48, 176 Pac. 819 (1918).

under imprisonment in New York and who has charges outstanding against him in New York may request trial of the untried charges. If trial is not held within 180 days, the charges may be dismissed.

The section will not affect existing law to the same degree as the Agreement, since in New York a convict already has the statutory right to move for the dismissal of the indictment if no trial has been held during the next term of court.[19] However, by marking a definite 180-day deadline, after which charges must be dismissed unless good cause for a continuance has been shown, the new act seems to provide a more efficacious remedy to the convict denied a speedy trial.

Section 673 of the Code of Criminal Procedure has heretofore provided that the dismissal of an action, in the instances specified by that chapter of the Code, is a bar to subsequent prosecution of the same offense if the offense is a misdemeanor, but not if it is a felony. This section has now been amended to include, as being barred, subsequent prosecutions of felonies dismissed under the provisions of the Interstate Agreement on Detainers or its intrastate counterpart.[20]

The Agreement on Detainers seems to be a logical and necessary step in protecting the rights of those accused of crimes. Under the previous law the mere fact that another state's permission was needed to obtain custody of the accused was considered a valid reason for postponing trial. This was a harsh exception to the right to a speedy trial, especially where the prosecuting state had made no effort to secure temporary custody of the accused from the incarcerating state. Under the new law an accused will be better able to prepare his defense since the evidence and the memories of the witnesses would be fresher.

But there is another advantage accruing uniquely to convicts. Previously a convict with other charges pending against him was a problem to penal institutions. He was denied certain privileges and treatment and, because of the uncertainty of the total length of his stay in prison, a proper program of rehabilitation was difficult. If he was subsequently acquitted of the charges against him, this previous denial of trustee status, parole and other benefits was unjustified.[21] Now all charges may be tried with reasonable speed, and his future to some extent predicted.

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[19] See N.Y. CODE CRIM. PROC. § 668; People v. Prosser, 309 N.Y. 353, 130 N.E.2d 891 (1955).

[20] See N.Y. CODE CRIM. PROC. § 673 (Supp. 1957). When § 669-a was enacted, § 673 was amended so as to bar the subsequent prosecution of felonies dismissed under the new section. When § 669-b was enacted three days later, the first amendment was ignored and the original § 673 was amended so as to include only the felonies dismissed under § 669-b. The literal effect of this second amendment is to repeal the first, and to leave out of the scope of § 673 felonies dismissed under § 669-a. However, this seems to be merely an administrative error, to be later corrected.

[21] Memorandum of Joint Legislative Committee on Interstate Cooperation, 1957 N.Y. LEGIS. ANNUAL 40-41. See Note, 48 COLUM. L. REV. 1190, 1192-93 (1948).

The Agreement contemplates adoption by the several states, the federal government, the District of Columbia, Puerto Rico and United States territories and possessions.[22] Its efficacy depends, of course, upon its adoption by other jurisdictions. The more that adopt it, the more effective it will be. However, from New York's point of view, an adoption by the federal government only will in itself be a sufficient justification for its retention.[23]

NEW YORK STATE RETAIL INSTALMENT SALES ACT

An ambitious legislative program, which heralds the beginning of an era of extensive regulation in the retail sales field in New York, was completed October 1, 1957. As of that date, virtually every sale of goods and related services made under a retail instalment sales plan within the state became subject to public regulation.[1]

Background

"Instalment selling is generally understood to mean the process of selling goods or services, with or without immediate part payment on a contract by which the purchaser agrees to pay the purchase price in regular, periodic instalments, either to the seller or to some other agency which may acquire the deferred payment contract." [2]

Although used in America to a limited extent a century and a half ago, this form of selling has enjoyed significant popularity only during the past thirty years. During these three decades the economy of the nation has become geared to and based upon the mass production and mass distribution of consumer goods. As an integral part of this new economic system, instalment selling by the "easy budget plan" has become firmly enrooted in American retail transactions.[3]

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[22] N.Y. CODE CRIM. PROC. § 669-b, art. II(a) (Supp. 1957).

[23] Memorandum of Joint Legislative Committee on Interstate Cooperation, 1957 N.Y. LEGIS. ANNUAL 42. It appears that many of the cases in this area involve an accused denied a speedy trial by a state because he was a federal prisoner.

[1] See Memorandum of Consumer Council to the Governor, MCKINNEY'S SESSION LAWS OF NEW YORK 2113 (1957).

[2] Donaldson, *An Analysis of Retail Installment Sales Legislation*, 19 ROCKY MT. L. REV. 135 (1947), citing Nugent and Henderson, *Installment Selling and the Consumer: A Brief for Regulation*, 173 ANNALS 93-103 (1934).

[3] For an excellent history of the growth of instalment buying and an analysis of the factors contributing to its growth, see COX, THE ECONOMICS OF INSTALMENT BUYING 62-74 (1948).