

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1971

ENROLLED

SENATE BILL NO. 65

(By Mr. HOLIDAY AND MR. SHARPE)

PASSED MARCH 4, 1971

In Effect NINETY DAYS FROM Passage



FILED IN THE OFFICE  
JOHN D. ROCKEFELLER, IV  
SECRETARY OF STATE  
THIS DATE 3-15-71

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**Senate Bill No. 65**

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AN ACT to amend chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen, relating to enacting the agreement on detainees; defining appropriate court as a court of record with criminal jurisdiction; providing for enforcement of the agreement by all courts, departments, agencies, officers and employees of the state and its political subdivisions; prohibiting escape from temporary custody; providing that application of the "habitual criminal" law is not required; requiring delivery of custody of an inmate pursuant to the operation of the agreement on detainees; and designating

the commissioner of public institutions as the central administrator and chief information officer of the agreement on detainers.

*Be it enacted by the Legislature of West Virginia:*

That chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article fourteen, to read as follows:

**ARTICLE 14. AGREEMENT ON DETAINERS.**

**§62-14-1. Enactment of compact.**

1 The agreement on detainers is hereby enacted into law  
2 and entered into by this state with all other jurisdictions  
3 legally joining therein in the form substantially as fol-  
4 lows:

5 **AGREEMENT ON DETAINERS**

6 The contracting states solemnly agree that:

**ARTICLE I**

1 The party states find that charges outstanding against  
2 a prisoner, detainers based on untried indictments, in-  
3 formations or complaints, and difficulties in securing  
4 speedy trial of persons already incarcerated in other

5 jurisdictions, produce uncertainties which obstruct pro-  
6 grams of prisoner treatment and rehabilitation. Accord-  
7 ingly, it is the policy of the party states and the purpose  
8 of this agreement to encourage the expeditious and order-  
9 ly disposition of such charges and determination of the  
10 proper status of any and all detainees based on untried  
11 indictments, informations or complaints. The party states  
12 also find that proceedings with reference to such charges  
13 and detainees, when emanating from another jurisdiction,  
14 cannot properly be had in the absence of cooperative  
15 procedures. It is the further purpose of this agreement  
16 to provide such cooperative procedures.

## ARTICLE II

1 As used in this agreement:

2 (a) "State" shall mean a state of the United States;  
3 the United States of America; a territory or possession  
4 of the United States; the District of Columbia; the Com-  
5 monwealth of Puerto Rico.

6 (b) "Sending state" shall mean a state in which a  
7 prisoner is incarcerated at the time that he initiates a  
8 request for final disposition pursuant to Article III hereof

9 or at the time that a request for custody or availability  
10 is initiated pursuant to Article IV hereof.

11 (c) "Receiving state" shall mean the state in which  
12 trial is to be had on an indictment, information or com-  
13 plaint pursuant to Article III or Article IV hereof.

### ARTICLE III

1 (a) Whenever a person has entered upon a term of im-  
2 prisonment in a penal or correctional institution of a party  
3 state, and whenever during the continuance of the term of  
4 imprisonment there is pending in any other party state  
5 any untried indictment, information or complaint on  
6 the basis of which a detainer has been lodged against  
7 the prisoner, he shall be brought to trial within one  
8 hundred eighty 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  
12 for a final disposition to be made of the indictment, in-  
13 formation 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  
17 request of the prisoner shall be accompanied by a cer-  
18 tificate of the appropriate official having custody of the  
19 prisoner, stating the term of commitment under which  
20 the prisoner is being held, the time already served, the  
21 time remaining to be served on the sentence, the amount  
22 of good time earned, the time of parole eligibility of  
23 the prisoner, and any decisions of the state parole agency  
24 relating to the prisoner.

25 (b) The written notice and request for final disposition  
26 referred to in paragraph (a) hereof shall be given or  
27 sent by the prisoner to the warden, superintendent or  
28 other official having custody of him, who shall promptly  
29 forward it together with the certificate to the appro-  
30 priate prosecuting official and court by registered or cer-  
31 tified mail, return receipt requested.

32 (c) The warden, superintendent or other official hav-  
33 ing custody of the prisoner shall promptly inform him of  
34 the source and contents of any detainer lodged against  
35 him and shall also inform him of his right to make a

36 request for final disposition of the indictment, informa-  
37 tion or complaint on which the detainer is based.

38 (d) Any request for final disposition made by a  
39 prisoner pursuant to paragraph (a) hereof shall operate  
40 as a request for final disposition of all untried indict-  
41 ments, informations or complaints on the basis of which  
42 detainers have been lodged against the prisoner from  
43 the state to whose prosecuting official the request for  
44 final disposition is specifically directed. The warden,  
45 superintendent or other official having custody of the  
46 prisoner shall forthwith notify all appropriate prosecut-  
47 ing officers and courts in the several jurisdictions within  
48 the state to which the prisoner's request for final dis-  
49 position is being sent of the proceeding being initiated  
50 by the prisoner. Any notification sent pursuant to this  
51 paragraph shall be accompanied by copies of the pris-  
52 oner's written notice, request, and the certificate. If trial  
53 is not had on any indictment, information or complaint  
54 contemplated hereby prior to the return of the prisoner  
55 to the original place of imprisonment, such indictment,  
56 information or complaint shall not be of any further

57 force or effect, and the court shall enter an order dis-  
58 missing the same with prejudice.

59 (e) Any request for final disposition made by a pris-  
60 oner pursuant to paragraph (a) hereof shall also be  
61 deemed to be a waiver of extradition with respect to  
62 any charge or proceeding contemplated thereby or in-  
63 cluded therein by reason of paragraph (d) hereof, and  
64 a waiver of extradition to the receiving state to serve  
65 any sentence there imposed upon him, after completion  
66 of his term of imprisonment in the sending state. The  
67 request for final disposition shall also constitute a consent  
68 by the prisoner to the production of his body in any  
69 court where his presence may be required in order to  
70 effectuate the purposes of this agreement and a further  
71 consent voluntarily to be returned to the original place  
72 of imprisonment in accordance with the provisions of  
73 this agreement. Nothing in this paragraph shall prevent  
74 the imposition of a concurrent sentence if otherwise  
75 permitted by law.

76 (f) Escape from custody by the prisoner subsequent

77 to his execution of the request for final disposition re-  
78 ferred to in paragraph (a) hereof shall void the request.

#### ARTICLE IV

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

18 (b) Upon receipt of the officer's written request as

19 provided in paragraph (a) hereof, the appropriate authori-  
20 ties having the prisoner in custody shall furnish the  
21 officer with a certificate stating the term of commitment  
22 under which the prisoner is being held, the time already  
23 served, the time remaining to be served on the sentence,  
24 the amount of good time earned, the time of parole eligi-  
25 bility of the prisoner, and any decisions of the state parole  
26 agency relating to the prisoner. Said authorities simultane-  
27 ously shall furnish all other officers and appropriate courts  
28 in the receiving state who have lodged detainers against  
29 the prisoner with similar certificates and with notices in-  
30 forming them of the request for custody or availability  
31 and of the reasons therefor.

32 (c) In respect of any proceeding made possible by this  
33 Article, trial shall be commenced within one hundred  
34 twenty days of the arrival of the prisoner in the receiving  
35 state, but for good cause shown in open court, the prisoner  
36 or his counsel being present, the court having jurisdiction  
37 of the matter may grant any necessary or reasonable  
38 continuance.

39 (d) Nothing contained in this Article shall be con-

40 strued to deprive any prisoner of any right which he may  
41 have to contest the legality of his delivery as provided  
42 in paragraph (a) hereof, but such delivery may not be  
43 opposed or denied on the ground that the executive  
44 authority of the sending state has not affirmatively con-  
45 sented to or ordered such delivery.

46 (e) If trial is not had on any indictment, information  
47 or complaint contemplated hereby prior to the prisoner's  
48 being returned to the original place of imprisonment  
49 pursuant to Article V (e) hereof, such indictment, in-  
50 formation or complaint shall not be of any further  
51 force or effect, and the court shall enter an order dis-  
52 missing the same with prejudice.

#### ARTICLE V

1 (a) In response to a request made under Article III  
2 or Article IV hereof, the appropriate authority in a send-  
3 ing state shall offer to deliver temporary custody of such  
4 prisoner to the appropriate authority in the state where  
5 such indictment, information or complaint is pending  
6 against such person in order that speedy and efficient  
7 prosecution may be had. If the request for final disposition

8 is made by the prisoner, the offer of temporary custody  
9 shall accompany the written notice provided for in Article  
10 III of this agreement. In the case of a federal prisoner, the  
11 appropriate authority in the receiving state shall be en-  
12 titled to temporary custody as provided by this agreement  
13 or to the prisoner's presence in federal custody at the  
14 place for trial, whichever custodial arrangement may be  
15 approved by the custodian.

16 (b) The officer or other representative of a state ac-  
17 cepting an offer of temporary custody shall present the  
18 following upon demand:

19 (1) Proper identification and evidence of his authority  
20 to act for the state into whose temporary custody the  
21 prisoner is to be given.

22 (2) A duly certified copy of the indictment, informa-  
23 tion or complaint on the basis of which the detainer has  
24 been lodged and on the basis of which the request for  
25 temporary custody of the prisoner has been made.

26 (c) If the appropriate authority shall refuse or fail to  
27 accept temporary custody of said person, or in the event  
28 that an action on the indictment, information or complaint

29 on the basis of which the detainer has been lodged is not  
30 brought to trial within the period provided in Article III  
31 or Article IV hereof, the appropriate court of the juris-  
32 diction where the indictment, information or complaint  
33 has been pending shall enter an order dismissing the same  
34 with prejudice, and any detainer based thereon shall  
35 cease to be of any force or effect.

36 (d) The temporary custody referred to in this agree-  
37 ment shall be only for the purpose of permitting prose-  
38 cution on the charge or charges contained in one or more  
39 untried indictments, informations or complaints which  
40 form the basis of the detainer or detainers or for prose-  
41 cution on any other charge or charges arising out of the  
42 same transaction. Except for his attendance at court and  
43 while being transported to or from any place at which  
44 his presence may be required, the prisoner shall be held  
45 in a suitable jail or other facility regularly used for  
46 persons awaiting prosecution.

47 (e) At the earliest practicable time consonant with  
48 the purposes of this agreement, the prisoner shall be re-  
49 turned to the sending state.

50 (f) During the continuance of temporary custody or  
51 while the prisoner is otherwise being made available for  
52 trial as required by this agreement, time being served on  
53 the sentence shall continue to run but good time shall  
54 be earned by the prisoner only if, and to the extent that,  
55 the law and practice of the jurisdiction which imposed  
56 the sentence may allow.

57 (g) For all purposes other than that for which tempo-  
58 rary custody as provided in this agreement is exercised,  
59 the prisoner shall be deemed to remain in the custody of  
60 and subject to the jurisdiction of the sending state and any  
61 escape from temporary custody may be dealt with in the  
62 same manner as an escape from the original place of im-  
63 prisonment or in any other manner permitted by law.

64 (h) From the time that a party state receives custody of  
65 a prisoner pursuant to this agreement until such prisoner  
66 is returned to the territory and custody of the sending  
67 state, the state in which the one or more untried indict-  
68 ments, informations or complaints are pending or in  
69 which trial is being had shall be responsible for the  
70 prisoner and shall also pay all costs of transporting, caring

71 for, keeping and returning the prisoner. The provisions  
72 of this paragraph shall govern unless the states concerned  
73 shall have entered into a supplementary agreement pro-  
74 viding for a different allocation of costs and responsi-  
75 bilities as between or among themselves. Nothing herein  
76 contained shall be construed to alter or affect any internal  
77 relationship among the departments, agencies and officers  
78 of and in the government of a party state, or between a  
79 party state and its subdivisions, as to the payment of costs,  
80 or responsibilities therefor.

#### ARTICLE VI

1 (a) In determining the duration and expiration dates  
2 of the time periods provided in Articles III and IV of  
3 this agreement, the running of said time periods shall be  
4 tolled whenever and for as long as the prisoner is unable  
5 to stand trial, as determined by the court having juris-  
6 diction of the matter.

7 (b) No provision of this agreement, and no remedy  
8 made available by this agreement, shall apply to any  
9 person who is adjudged to be mentally ill.

**ARTICLE VII**

1 Each state party to this agreement shall designate an  
2 officer who, acting jointly with like officers of other party  
3 states, shall promulgate rules and regulations to carry  
4 out more effectively the terms and provisions of this  
5 agreement, and who shall provide, within and without  
6 the state, information necessary to the effective opera-  
7 tion of this agreement.

**ARTICLE VIII**

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

**ARTICLE IX**

1 This agreement shall be liberally construed so as to  
2 effectuate its purposes. The provisions of this agreement  
3 shall be severable and if any phrase, clause, sentence or

4 provision of this agreement is declared to be contrary to  
5 the constitution of any party state or of the United States  
6 or the applicability thereof to any government, agency,  
7 person or circumstance is held invalid, the validity of  
8 the remainder of this agreement and the applicability  
9 thereof to any government, agency, person or circum-  
10 stance shall not be affected thereby. If this agreement  
11 shall be held contrary to the constitution of any state  
12 party hereto, the agreement shall remain in full force  
13 and effect as to the remaining states and in full force and  
14 effect as to the state affected as to all severable matters.

**§62-14-2. Appropriate court defined.**

1 The phrase "appropriate court" as used in the agree-  
2 ment on detainers shall, with reference to the courts of  
3 this state, mean a court of record with criminal jurisdic-  
4 tion.

**§62-14-3. Enforcement of agreement.**

1 All courts, departments, agencies, officers and em-  
2 ployees of this state and its political subdivisions are  
3 hereby directed to enforce the agreement on detainers  
4 and to cooperate with one another and with other party

5 states in enforcing the agreement and effectuating its  
6 purpose.

**§62-14-4. Application of “habitual offender” law not required.**

1 Nothing in this article or in the agreement on detainers  
2 shall be construed to require the application of sections  
3 eighteen and nineteen of article eleven, chapter sixty-one  
4 of the code of West Virginia to any person on account of  
5 any conviction had in a proceeding brought to final dis-  
6 position by reason of the use of said agreement.

**§62-14-5. Escape of prisoner while in temporary custody.**

1 Escape or attempt to escape from custody, whether  
2 within or without this state, while in the temporary  
3 custody of an authority of another state acting pursuant  
4 to the agreement on detainers shall constitute an offense  
5 against the laws of this state to the same extent and  
6 degree as an escape from the institution in which the  
7 prisoner was confined immediately prior to having been  
8 released to temporary custody and shall be punishable  
9 in the same manner as an escape or attempt to escape  
10 from said institution.

**§62-14-6. Delivering custody of prisoner.**

1 It shall be lawful and mandatory upon the warden,  
2 superintendent or other state official in charge of a penal  
3 or correctional institution in this state to give over the  
4 person of any inmate thereof whenever so required by  
5 the operation of the agreement on detainees.

**§62-14-7. Central administrator and information agent.**

1 The commissioner of public institutions shall serve as  
2 the central administrator and chief information officer  
3 for the agreement on detainees, pursuant to the provi-  
4 sions of Article VII of the agreement.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Fussell A. Bull*  
Chairman Senate Committee

*Phyllis Rutledge*  
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

*Howard Meyer*  
Clerk of the Senate

*C. A. Blankenship*  
Clerk of the House of Delegates

*Edw. Coont*  
President of the Senate

*Joe F. Bowers*  
Speaker House of Delegates

The within *approved* this the *13th*  
day of *March*, 1971.

*Arch A. Shaw, Jr.*  
Governor

PRESENTED TO THE  
GOVERNOR

RECEIVED

Date 3/9/71

Time 1:45 p.m.

MAR 15 10 03 AM '71

OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA