

CASE DISMISSED: WHY THE
INTRASTATE DETAINER STATUTE
SHOULD BE ON YOUR RADAR

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INT*RA*STATE NOT INT*ER*STATE



Wis. Stat. § 971.11



Wis. Stat. § 976.05

Non-identical rights governed by separate statutory provisions

THE BASICS

- An **INMATE** in a Wisconsin prison . . .
- with an **UNTRIED** Wisconsin **CRIMINAL CASE** . . .
- has the right to **DEMAND** that trial in that case **COMMENCE** . . .
- **WITHIN** 120 days (felony) OR 90 days (misdemeanor).
- Failure to bring case to trial in time results in **DISMISSAL**.

OK. SO HOW DOES IT WORK?

- **WARDEN** given notice of a detainer being placed on the inmate by the **PROSECUTING JURISDICTION**
- Here's an example:

Thursday, October 19, 2017

Dodge Correctional Institution
Attn: Records Department
1 West Lincoln Street
P.O. Box 661
Waupun, WI 53963-0661

FILED
CRIMINAL/TRAFFIC
DIVISION

OCT 19 2017

WAUKESHA CO., WI

VIA FAX: (920) 324-6297 (2 pages, including cover)

- Please **place** a detainer on the defendant listed below. Attached is the Bond; Court sets **CASH BAIL** at \$250.00. After the detainer has been placed, please send an acknowledgement to our office, via mail or fax to (262) 896-8228.

Defendant: [REDACTED]
Case No.: [REDACTED]
DOC: [REDACTED]
DOB: [REDACTED]

In the event defendant posts at your Jail, please also have defendant sign the bond and return it to our Court.

AND THEN . . .

- The **WARDEN** notifies the **INMATE** of the **DETAINER**
- Like this:

DEPARTMENT OF CORRECTIONS

Division of Adult Institutions
DOC-166(Rev 9/03)

WISCONSIN

Wisconsin Statutes
Section 971.11

DETAINER ACKNOWLEDGEMENT

OFFENDER NAME	DOC NUMBER	LOCATION
[REDACTED]	[REDACTED]	Dodge Correctional Institution

This is to acknowledge that on this date I have been notified by the authorities of the above-named institution that a Detainer has been filed against me on behalf of Waukesha County Jail/Sheriff Dept in the City of Waukesha, WI charging me with the following offense(s):

Eligible for prompt disposition*: Yes

I also acknowledge that on this date I was informed of my right to a prompt disposition of the case and that I could consult with my attorney before making a decision. In regard to my right to a prompt disposition, I make the following decision:



I request that a request for a prompt disposition of the case be sent to the appropriate authority on my behalf.

I do not wish to apply for a prompt disposition at this time. If I should change my decision, I will notify the appropriate institution authorities in writing.

I wish to discuss the issue of prompt disposition with my attorney and will notify the appropriate institution authorities of my decision in writing.

AND THEN . . .

- **INMATE** decides whether to demand **PROMPT DISPOSITION**
 - Can consult with attorney (but doesn't have to (we'll get to that in a second))
 - No deadline for decision (aside from resolution of criminal case)
 - Must notify institution of ultimate decision
- Once **INMATE** notifies of want to invoke **PROMPT DISPOSITION** . . .

→ **WARDEN** ← file the proper paperwork and trigger right



WHAT'S THE PROPER PAPERWORK

- Statute requires:
 - **WRITTEN** request . . .
 - To the **DISTRICT ATTORNEY** in retaining jurisdiction . . .
 - For prompt disposition of the case.
 - **MUST BE** sent by **CERTIFIED MAIL** . . .
 - **FROM** the **WARDEN**.

AS YOU'D EXPECT, THE DOC HAS A FORM

DEPARTMENT OF CORRECTIONS
Division of Adult Institutions
DOC-197 (Rev. 2/02)

WISCONSIN
Wisconsin Statutes
Section 971.11

REQUEST FOR PROMPT DISPOSITION

Dear Sir / Madam:

We submit the following information at the request of the above-named inmate in his/her request for prompt disposition of this case on a charge of _____

Your Warrant dated _____ is now on file against him/her at the _____

Subject is now under commitment at the

INSTITUTION / CENTER NAME	STREET	CITY	STATE	ZIP

from the County of _____, the court of _____

and sentenced on the date of _____.

THE REST OF DOC-197

CRIME

SENTENCE

DATE RECEIVED AT INSTITUTION

DATE ELIGIBLE FOR PAROLE

APPROXIMATE MANDATORY RELEASE/EXTENDED SUPERVISION ELIGIBILITY DATE

MAXIMUM EXPIRATION DATE

PREVIOUS DECISION RELATING TO PAROLE

REMARKS:

I waive my right to a preliminary hearing.

I understand that I have the right to discuss this with my attorney.

INMATE SIGNATURE

DATE SIGNED

WITNESS SIGNATURE

DATE SIGNED

WE'VE GOT THE FORM, NOW WHAT?

- Mailed by certified mail to district attorney

CRIME
[REDACTED]

SENTENCE
[REDACTED]

DATE RECEIVED AT INSTITUTION
[REDACTED]

APPROXIMATE MANDATORY RELEASE/EXTENDED SUPERVISION ELIGIBILITY DATE

Serve to Maximum Expiration Date

PREVIOUS DECISION RELATING TO PAROLE

**U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT**
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Postage	\$.59
Certified Fee	2.70
Return Receipt Fee (separate Payment Required)	2.20
Restricted Delivery Fee (separate Payment Required)	
Postage & Fees Total	\$ 3.49

Postmark Here
MAR 18 2004
WAUKESHA, WI

WAUKESHA COUNTY
DISTRICT ATTORNEY'S OFFICE
515 W. MORELAND BLVD
WAUKESHA WI 53188-2428

PS Form 3811, February 2004

2 Article Number 7007 0220 0004 3079 3583
(Transfer from service label)
PS Form 3811, February 2004

1. Article addressed to:
WAUKESHA COUNTY
DISTRICT ATTORNEY'S OFFICE
515 W. MORELAND BLVD
WAUKESHA WI 53188-2428

3 Service Type
 Certified Mail
 Registered
 Insured Mail
 Express Mail
 Return Receipt for Merchandise
 C.O.D.
4. Restricted Delivery? (Extra Fee)
 Yes

SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

Signature
Received by (Printed Name)
C. Date of Delivery
3 19 04

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below.

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discuss this v

File, Copy - CRU, Copy -

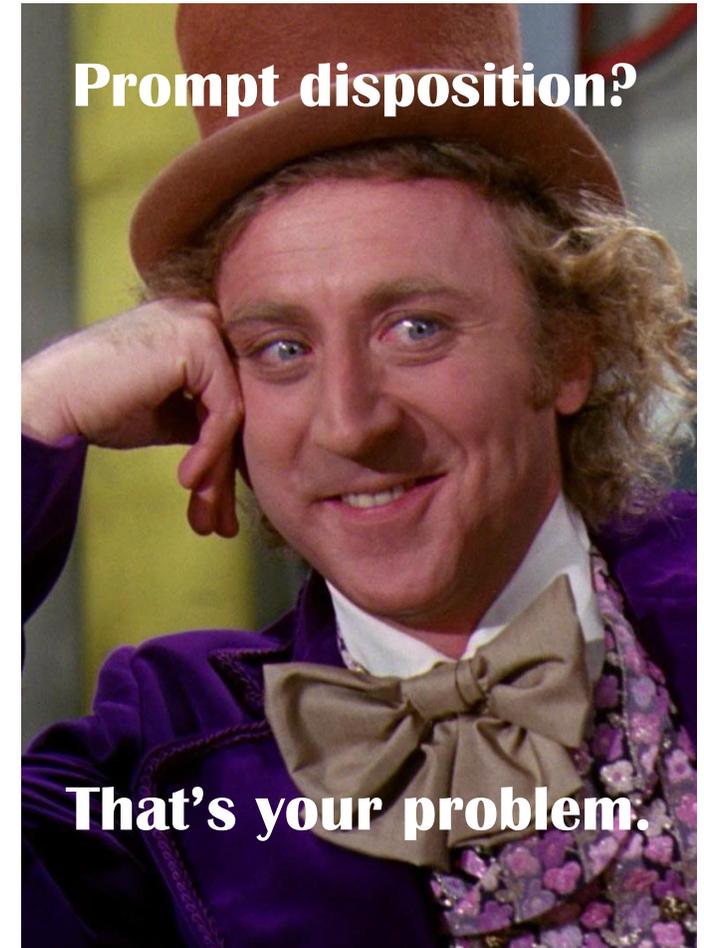
PS Form 3800

WHAT PROMPT DISPOSITION GETS YOU

- A trial deadline (from date prosecutor receives it)
 - 120 days felonies/90 days misdemeanors
- Absolute right to dismissal if deadline blown
 - Good cause extensions allowable
 - Defendant's actions can eviscerate the right
- With or without prejudice is up to the court
 - But dismissal must result

LAW ABOUT TRIGGERING THE RIGHT

- “[T]he request for prompt disposition . . . **IS NOT MADE BY A PARTY BUT BY THE WARDEN OR SUPERINTENDENT** at the inmate’s request.” *State v. Adams*, 207 Wis. 2d 568, 558 N.W.2d 923 (Ct. App. 1996)
- “Once the district attorney **RECEIVES THE REQUEST**, the responsibility for prompt disposition is **PLACED SQUARELY ON THE DISTRICT ATTORNEY.**” *State v. Lewis*, 2004 WI App 211, 277 Wis. 2d 446, 690 N.W.2d 668.



Prompt disposition?

That's your problem.

RIGHT TO DISMISSAL

- “If the . . . case . . . is not brought on for trial within the time specified . . . the case **SHALL BE DISMISSED** unless the defendant has escaped or otherwise prevented the trial, in which case the request for disposition of the case shall be deemed withdrawn and of no further legal effect.” Wis. Stat. § 971.11(7).
- “[T]he **STATE’S** failure to bring the case on for trial within the 120-day time period . . . **PERMITS THE CIRCUIT COURT** . . . to exercise its discretion **TO DISMISS** the criminal case **WITH OR WITHOUT PREJUDICE.**” *State v. Davis*, 2001 WI 136, 248 Wis. 2d 986, 637 N.W.2d 62

WITH OR WITHOUT PREJUDICE

- “The detriment/benefit objective can be achieved in Wis. Stat. § 971.11(7) by allowing a circuit court to **DISMISS** a criminal case **WITH PREJUDICE WHEN NO GOOD CAUSE** is shown for the State's failure to comply with the 120-day time period and to **DISMISS** a criminal case **WITHOUT PREJUDICE WHEN GOOD CAUSE** is shown for doing so.” *Davis*, 2001 WI 136.
- *Davis* has a **LIST OF FACTORS** the court should consider in making the decision (paragraph 29)
- But, remember: **NO GOOD CAUSE = PREJUDICIAL DISMISSAL**

GOOD CAUSE ADJOURNMENTS

- Extensions may be given upon a showing of good cause
- The speedy trial statute's adjournment provision controls (§ 971.10(3))
- Court must put reasons for adjournment **ON RECORD**
- Must find ends of justice served by continuance outweigh the best interests of the public and the accused in a prompt disposition
- Has to be done **BEFORE** the deadline expires

A NOTE ON ADJOURNMENTS

- A good cause adjournment of a **SPEEDY TRIAL RIGHT ALSO COUNTS** for a prompt disposition adjournment **EVEN IF** the court had **NO IDEA** of the defendant's **RIGHT TO PROMPT DISPOSITION**



- “While the circuit court **DID NOT EXPLICITLY ADDRESS** Butler's intrastate detainer request, **WE SEE NO HARM**, as the request and its attendant time limit were subject to the speedy trial grounds and authorization for a continuance.” *State v. Butler*, 2014 WI App 4

ESCAPE CLAUSE

- “. . . unless the defendant has **ESCAPED OR OTHERWISE PREVENTED THE TRIAL**, in which case the request for disposition of the case shall be deemed withdrawn and of no further legal effect.” 971.11(7)
- No law as to what “otherwise prevented the trial” means
- But *State v. Miller*, 2003 WI App 74 talks about similar things in intERstate detainer context
- Arguably, it’s going to have to be some **PURPOSEFUL ATTEMPT TO DELAY** by the defendant

QUICK RECAP

- Inmate (your client) was **CONTACTED BY DOC STAFF** about prompt disposition;
- Inmate (your client) **TOLD DOC TO DEMAND** prompt disposition;
- The warden **MAILED THE DISTRICT ATTORNEY** the inmate's (your client's) demand for prompt disposition; and
- The district attorney received the demand, thus **TRIGGERING THE DISMISSAL DEADLINE.**

AND . . .

... NOBODY TOLD YOU ABOUT IT!!!!



And if that's not bad enough . . .

YOU MIGHT NEVER FIND OUT ABOUT IT

- Remember:
 - The **DOC** sends the paperwork to **ONLY** the district attorney
 - The **DOC WILL NOT CONTACT YOU** to inform you that it's discussed prompt disposition with your client
 - Your client **PROBABLY DOESN'T KNOW** that you aren't being informed
 - Your client **MIGHT NOT EVER MENTION IT** to you
 - The prosecution **MAY NEVER MENTION IT** to you



WHAT IF YOU FIND OUT AFTER THE DEADLINE?

- Your client is ENTITLED TO DISMISSAL
- Case law allows DISMISSAL AFTER DEADLINE even WITHOUT NOTICE of deadline PRIOR TO expiration
- You can FILE A MOTION TO DISMISS
- Court gets to DECIDE ONLY whether WITH OR WITHOUT PREJUDICE
- The PRECISE REASONS for prosecution's NONCOMPLIANCE are relevant to PREJUDICE INQUIRY; find them out

WHAT IF YOU FIND OUT BEFORE THE DEADLINE?

- Again, the **PROSECUTION** is responsible for compliance
- Only the **PROSECUTION** is provided **NOTICE OF** the right's **INVOCATION**
 - So, arguably, only prosecution has any responsibility to notify the court and defense counsel
- Arguably, **DEFENSE'S FAILURE TO NOTICE** does not relieve the prosecution of the **CONSEQUENCES OF NONCOMPLIANCE**

WHAT IF YOU FIND OUT AFTER UNTIMELY TRIAL?

- That's a good question
- The **PROSECUTION VIOLATED** your client's statutory rights and **THE SOLELY RECOGNIZED REMEDY** for that violation is **DISMISSAL**
- **NOTHING** in statute **LIMITS AVAILABILITY OF REMEDY** to **BEFORE TRIAL**
- **NOTHING** presently **RECOGNIZES** a **CUT-OFF DATE** to remedy
- Your client **SHOULD BE ENTITLED TO DISMISSAL**

WHAT IF YOU FIND OUT ON DIRECT APPEAL FROM UNTIMELY TRIAL?

- That's also a good question
- Arguably, your client should **STILL BE ENTITLED TO DISMISSAL**
- The prosecution **FAILED IN ITS OBLIGATION** to timely try the defendant, which was **SQUARELY ITS RESPONSIBILITY**
- There is support for this in *State v. Butler*

INEFFECTIVE ASSISTANCE OF COUNSEL FOR NOT MOVING TO DISMISS?

- State Public Defender Appellate Div. has before alleged IAC for not filing motion to dismiss on prompt disposition grounds
 - State v. Upthegrove, 2016AP2035-CR
 - Defense counsel **KNEW ABOUT THE ISSUE** from **ON-THE-RECORD DISCUSSION** but did not file motion to dismiss
 - IAC argument made only to **COUNTERACT ANTICIPATED FORFEITURE** claim
 - Case decided on alternate theory; issue not addressed
- So, you will likely see that argument again

INEFFECTIVE ASSISTANCE OF COUNSEL FOR NOT MOVING TO DISMISS?

- But (and the SPD argued this) . . .
 - The prosecution is the only party that is obligated to comply with prompt disposition right
 - Once the deadline is blown, statute says case “shall be dismissed”
 - There is no recognized limit to when motion to dismiss for violation can be made
 - Arguably, defendant should be allowed to assert right even after conviction despite no prior motion to dismiss
 - So, not moving to dismiss arguably forfeits nothing, and thus is not IAC
- Though, expect to see continued litigation on the point

WHAT IF YOU FIND OUT IN 974.06 PROCEEDINGS?

- **CANNOT RAISE** the claim **DIRECTLY** (974.06 does not protect **STATUTORY RIGHTS**)
- May be able to allege **INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL** for not raising issue on direct appeal
 - This depends on whether the claim would have been cognizable on direct appeal;
 - Whether there were direct appeal proceedings; and
 - Whether direct appeal counsel chose not to bring the claim for strategic reasons

WHAT SHOULD YOU DO (TRIAL COUNSEL)?

- Do you **WANT** to know?
- Is client serving a **STATE SENTENCE** (even a revocation sentence)?
- Then **ASK THE CLIENT** about it
- If demanded, **CONTACT DOC** records to **GET COPIES OF PAPERWORK**
 - You'll need DOC-1163 & 1163A forms signed by your client
- Decide **WITH YOUR CLIENT** what you're going to do
- **DOCUMENT** in the file and in a writing to client any **COUNSELED DECISIONS**

WHAT SHOULD YOU DO (APPELLATE COUNSEL)?

- ASK THE CLIENT about it
- If demanded, CONTACT DOC records to GET COPIES OF PAPERWORK
 - You'll need DOC-1163 & 1163A forms signed by your client
- Decide WITH YOUR CLIENT what you're going to do
- DOCUMENT in the file and in a writing to client any COUNSELED DECISIONS

STATE'S ARGUMENTS

- The DOC-197 not signed by defendant
 - Doesn't have to be
- Defendant cannot prove written notice to DOC of invoking right
 - That's from DOC-166 (the notice form). It's baseless
- Failure to notify the court before deadline constitutes forfeiture
 - State squarely responsible for compliance
- Failure to move for dismissal until after trial constitutes forfeiture
 - Again, it's the State's obligation and there's no statutory deadline for the motion

RELEVANT LAW

- Wis. Stat. § 971.11
- *State v. Davis*, 2001 WI 136, 248 Wis. 2d 986, 637 N.W.2d 62
- *State v. Lewis*, 2004 WI App 211, 277 Wis. 2d 446, 690 N.W.2d 668
- *State v. Butler*, 2014 WI App 4, 352 Wis. 2d 484, 844 N.W.2d 392
- *State v. Henningsen*, No. 2018AP475, per curiam (Wis. Ct. App. Mar. 21, 2019)