University of Michigan Journal of Law Reform

Volume 1

1968

Unconstitutional Uncertainty: A Study of the Use of Detainers

Donald E. Shelton
University of Michigan Law School

UNCONSTITUTIONAL UNCERTAINTY: A STUDY OF THE USE OF DETAINERS

*Donald E. Shelton**

When an individual has been convicted of an offense and imprisoned in one jurisdiction, other jurisdictions having outstanding charges against the prisoner often file what is known as a detainer or "hold order" with the confining institution. This detainer is defined as "a warrant filed against a person already in custody with the purpose of insuring that, after the prisoner has completed his present term, he will be available to the authority which has placed the detainer."[1] On its face, it is no more than a request for information. The procedure for filing such a request is very simple. When the prosecutor learns that the accused is being held in another jurisdiction, he merely sends a letter or a copy of the warrant to the warden of the prison. As a matter of "courtesy",[2] the warden will notify the requesting agency when the release of the prisoner is imminent. This procedure is used within a single state, between states, and between a state and the federal government. If the prisoner is confined within the same state, he may be arrested upon his release on the authority of the warrant alone. The filing of a detainer itself, however, does not grant any legal authority to detain. If the prisoner is confined in another state, the requesting agency must still secure a court order to obtain custody of him.

While the stated purposes and form of the detainer procedure appear to be innocent enough, it has, in practice, led to both poor penology and a denial of the prisoner's right to a speedy trial on the outstanding charges. To examine the effects of the detainer procedure, the author conducted interviews with officials at three prisons—State Prison of Southern Michigan (Jackson) at Jackson, Michigan; Indiana State Prison (Indiana) at Michigan City, Indiana; and the Federal Correctional Institution (Milan) at Milan, Michigan.[3]

The number of prisoners with detainers filed against them is extremely

---

*Mr. Shelton is a member of the Staff of *Prospectus*.

[1] REPORT OF THE JOINT COMMITTEE ON DETAINERS, HANDBOOK ON INTERSTATE CRIME CONTROL (The Council of State Governments, 1949) at 85.

[2] Hincks, *The Need for Comity in Criminal Administration*, FED. PROBATION, July-Sept. 1945, at 3.

[3] At Jackson, interviews were conducted with Deputy Warden Perry Johnson and Mr. J. Wilkins (Parole Camp Supervisor). At Milan, Warden Paul Sartwell, Mr. J. C. Everett (Advisory Assistant, Record Office), and Mr. E. M. Cage (Parole Officer) were extremely cooperative. At Indiana, Warden Ward Lane was interviewed. These officials expressed opinions based upon their personal experience with the detainer procedure and did not purport to represent the official position of the prison systems. Unless otherwise noted, the estimates contained herein are based upon those opinions.

high. Estimates range from twelve to twenty percent in state prisons to thirty percent in federal penitentiaries.[4] Many of these prisoners have more than one detainer filed against them. The outstanding charges range from traffic offenses to murder. But the number of detainers filed is a deceiving figure. Under the present system in most states, the filing of a detainer does not bind the requesting agency in any way. It may or may not prosecute the prisoner when he is released. After the prison notifies the agency of the imminent release of the prisoner, the prosecutor will decide whether he will take the man into custody or not. The prisoner will not learn if he is really free or not until the time of his release. Often the prosecutor never shows up. It is estimated that less than half of the filed detainers are ever exercised or even filed with any intention of being exercised.

The question is why a prosecutor would go through the motions of asking a warden to notify him of the availability of a prisoner that he never intends to take into custody. The first answer is that it is common practice for many prosecutors to automatically file a detainer upon learning that an accused is imprisoned elsewhere. This decision is made without any regard to their eventual decision to prosecute. But the more basic answer, and the reason why this practice of automatic filing of detainers has developed, lies in the effects a detainer has upon the prisoner.

Prison Inequities

In many states, a detainer prisoner is automatically ineligible for parole.[5] This ineligibility is usually not statutory but rather is the result of the policy of state parole boards. The net effect is that detainer prisoners who are otherwise good parole risks may spend three or more times as long in prison as they would if a detainer had not been filed. In states where a system of indeterminate sentencing has been adopted, prisoners are normally eligible for parole at any time after the minimum term. But many state parole eligibility statutes are patterned after the federal requirement that a prisoner complete one-third of his term. In both situations, a parole board policy of disqualifying prisoners solely on the basis of a detainer stultifies the legislative scheme. Merely by the *allegation* of an offense the prosecutor has in effect tried, convicted, and sentenced the defendant to additional time in prison. The extreme case is not difficult to imagine. For example, John Doe was convicted in state X of armed robbery and sentenced to fifteen years in prison. Under the laws of that state, he was eligible for parole after five years. But a prosecutor in state Y had a warrant against Doe for reckless driving and filed a detainer with

---

[4] Bennett, *The Last Full Ounce*, FED. PROBATION, June 1959, at 20-21.

[5] Bennett, *The Correctional Administrator Views Detainers*, FED. PROBATION, July-Sept. 1945 p. 8, at 9-10. *See also* Heyns, *The Detainer in a State Correctional System*, FED. PROBATION, July-Sept. 1945, at 14.

[6] 18 U.S.C. §4202 (1964).

the warden. Doe, who was otherwise a good parole risk, became ineligible for parole and spent an additional ten years in prison. At the end of his term, the prosecutor in state Y took Doe into custody. A court found him guilty of reckless driving and sentenced him to thirty days in jail.

Variations of parole ineligibility are equally effective. In Indiana, the policy of the parole board is to grant only "custody" paroles to detainer prisoners. This is not parole at all. If the prisoner is eligible in other respects, he is granted a parole conditioned upon the filing agency's exercise of its detainer. The agency is notified that the prisoner is about to be released on parole. But if the agency does not secure a court order and does not show up to apprehend the prisoner, he is never released. The detainer is unaffected. It continues to be in effect until the completion of the prisoner's sentence.

Other parole boards, however, allow ordinary parole to detainer prisoners. This is normal parole in the sense that it is not conditioned upon any action by the filing agency. The rationale of such a policy starts from the idea that once a man has been successfully rehabilitated, it is useless and wasteful to keep him in prison. The parole board's duty is to evaluate the progress of his rehabilitation and return him to society when he is prepared to do so. Even if the prisoner is actually prosecuted and convicted on the outstanding charges, it is better from the standpoint of rehabilitation that he be allowed to begin his second sentence as early as possible. In 1955, the United States Board of Parole finally recognized the "nuisance detainer" problem and adopted a policy of granting parole to detainer if the prisoner was considered in other respects to be a good parole risk.[7] Since that time the Board has granted an increasing number of paroles to detainer prisoners. In fiscal year 1966-67, a total of 729 were granted.[8] A substantial number of prisoners (at least federal prisoners) with detainers filed against them have thus been found to be good parole risks. Indeed, even if only one such parole had been granted, it points out the fallacy of a system of arbitrary denials. Unless a parole board is willing to live with the fact that it is confining some fully rehabilitated prisoners, such a system cannot withstand analysis. Michigan grants both parole to detainer and custody parole. However, even when ordinary parole is granted, the detainer prisoner is treated differently. At Jackson, prisoners ordinarily move from the prison proper to a minimum security "parole camp" for an adjustment period prior to their actual release on parole. Paroled detainer prisoners are never allowed this adjustment measure and go directly from maximum security to the street. Such unequal treatment is certainly unjustifiable from a rehabilitative standpoint. But this denial of parole camp at Jackson is indicative of the multitude of other inequities that face a detainer prisoner.

---

[7] UNITED STATES BOARD OF PAROLE, ANNUAL REPORT (1959-60), at 16.

[8] Letter of James C. Neagles, Staff Director of U.S. Board of Parole, November 8, 1967, on file in PROSPECTUS office.

The reason for such inequities within the prison lies in the custodial classification of the detainer prisoner. Normally, a prisoner is classified in maximum, medium, or minimum custody based upon the seriousness of the crime for which he was convicted and the prison's estimate of his mental stability. In each of the three institutions studied, the filing of a detainer places the prisoner in a maximum custody classification. The rationalization is that the prisoner then has more incentive to escape. The attitude of prison officials is that their primary duty is to confine the prisoner. Even accepting that restricted view of the objective of a correctional system, their actions are illogical. The classification of detainer prisoners is made automatically without regard to the seriousness of the *alleged* crime or the prisoner's possible change in mental stability. No individual evaluation is made. Such an arbitrary system is based on two fallacious assumptions. The first is either that the prisoner is guilty of the outstanding charge or that even if he is not, the charge itself provides an incentive to escape. The flaw in either alternative is obvious. Any assumption of guilt is anathema to our entire judicial system. And an assumption that the allegation of an offense provides an incentive to flee presumes such a universal distrust and lack of faith in our adversary process that individuals would rather become fugitives than stand trial on a charge of which they are innocent. The second assumption made by prison officials is that the possibility of another term in prison so discourages the prisoner that he is more likely to escape. Such reasoning may be sound if the prisoner faces the possibility of a lengthy term, but when the outstanding charge is minor, as in the reckless driving example, it is not. It is ridiculous to assume that the possibility of thirty days in jail will lead a man presently serving a fifteen year term to escape. The point is that the assumptions made by officials in classifying the detainer prisoner are not only false; they are unnecessary. Custodial classification of detainer prisoners could and should be based upon the same individual evaluation process that was used to determine the original classification.

The ramifications of this custodial classification are extremely important. In each of the prisons studied, maximum security prisoners are never allowed outside the walls. They can never become trustys. They are ineligible for the farms and work camps or, for that matter, any job which requires outside activity. At Milan and Jackson the classification also means ineligibility for both work-release and study-release programs. (Indiana does not have such programs.) Normal prisoners are occasionally allowed temporary "furloughs" in the event of a death in their immediate family. Detainer prisoners, because of their classification, are even denied this small privilege. Prior to 1967, the vocational training buildings at Milan were outside the walls so detainer prisoners could not receive any of the training that is so essential to rehabilitation. The situation still exists in some federal prisons.

Such restrictions on detainer prisoners obviously impair any rehabilitation planning by prison officials. The most they can do is use the inside

facilities in an attempt to adjust the prisoner to the prison routine. Prison officials generally feel that it is useless to spend money attempting rehabilitation of a prisoner whose only future prospects may consist of being transferred from one prison to another.[9] Even if the prison officials could effectively plan a rehabilitation program under the present system, the task of motivating detainer prisoners is almost insurmountable. Their morale is understandably very low. In each of the three institutions studied, officials felt that the filing of a detainer and the resulting ineligibilities made the prisoners uncooperative and unable to adjust to the institutional life. There is no incentive for good behavior since the prisoner's custody classification is the worst it will ever be and there is little or no prospect of an early return to society.[10] From a rehabilitation aspect, the detainer prisoner is an outcast. The man who is charged with an additional offense is denied both normal privileges during his imprisonment and any hope of re-entering society when he is sufficiently rehabilitated to do so. He is naturally "filled with anxiety and apprehension and frequently does not respond to a training program."[11]

The denials which cause these psychological effects are not based upon the considered judgement of a court of law with its accompanying procedural protections. Nor are they based upon an objective and individual analysis of the prisoner or the charges against him. The whole chain of events began with the some times frivolous and often times thoughtless *allegation* of a single prosecutor. Indeed, in many instances the prosecutor who filed the detainer is no longer in office when the prisoner completes his discouraging and often prolonged sentence. The new prosecutor only learns of the case when he receives notification of the prisoner's imminent release. One may only speculate as to what motivated the prosecutor to file a detainer in the first place. Perhaps a motivation is not desire to cause the multitude of inequities and ineligibilities that will result from his action. Perhaps it is merely the thoughtlessness of office routine or the political ins and outs of office holders that causes the filing of detainers which are never exercised. But regardless of the motivation, the fact is that the filing of a detainer is the beginning of a process that destroys any and every effort to establish a modern correctional system.

The Denial Of Speedy Trial

Upon notice[12] that a detainer has been filed against them, many prisoners correspond with the filing agency in an effort to get some dis-

---

[9] Bennett, *supra* note 5, at 8.

[10] *See* S. RUBIN, THE LAW OF CRIMINAL CORRECTION, Chap. 11 §§ 21, 22. *See also* Bates, *The Detained Prisoner and His Adjustment*, FED. PROBATION, July-Sept. 1945, at 16-17.

[11] REPORT OF THE JOINT COMMITTEE ON DETAINERS, *supra* note 1, at 86.

[12] In Jackson and Milan, formal written notice of the filing of a detainer is immediately given to the prisoner. In Indiana, oral notice is given by the case workers.

position of the charges. In the three prisons studied, officials frequently work with the prisoner in this effort and correspond with the agency, if the prisoner so desires. Often neither the prisoner nor the officials get any response from the agency. Even if a response is received, the prisoner's chances for an immediate trial are slim. In Indiana, only two to three percent of the detainer prisoners are ever returned for trial during their present term. Transfers for trial are also a rarity at Milan. Under the present system in both prisons,[13] the prisoner remains in a state of uncertainty until it is time for his release. He can neither get a trial nor a dismissal. Only when he is released will he learn of the prosecutor's intentions.

Some defendants have challenged the validity of such a system as a denial of their right to a speedy trial as guaranteed by the state or federal constitution. Most of the earlier cases held that the failure of an agency to grant some disposition of the charges was not a violation of the defendant's right to speedy trial when he was incarcerated on another charge.[14] The rationale of these cases rested on four grounds. The first was that the speedy trial guarantee of the Sixth Amendment to the U.S. Constitution was not made applicable to the states by the due process clause of the Fourteenth Amendment. Hence, the defendant could only rely on his rights under the state constitution. Many state constitutions refer to the right of speedy trial as arising at the time of the indictment or information. Thus when the detainer was filed on the basis of a complaint only, the defendant had no right which could be violated. This contention is now obsolete. In *Klopfer v. North Carolina,*[15] the Supreme Court held that the right to speedy trial is as fundamental as any of the Sixth Amendment rights and is made obligatory on the states by the Fourteenth Amendment. The right to speedy trial in criminal cases arises under the federal constitution upon a formal complaint being lodged against the defendant.[16]

In all detainer systems, the filing agency must bear the cost of returning the prisoner for trial. The agencies argued that the right to a speedy trial did not impose a duty upon them to incur such expenses. The fallacy of

[13] Michigan has enacted legislation which deals with the return of detainer prisoners for trial. The situation at Jackson under this legislation is discussed *infra.*

[14] In re Schechtel, 103 Colo. 77, 82 P.2d 762 (1938); McCrary v. Kansas, 281 F.2d 185 (10th Cir. 1960), *cert. denied,* 364 U.S. 850 (1961); State v. Larkin, 256 Minn. 314, 98 N.W.2d 70 (1959); In re Douglas, 54 Ariz. 332, 95 P.2d 560 (1939); Application of Melton, 342 P.2d 571 (Okla. Ct. of Crim.App. 1959); Raine v. State, 143 Tenn. 168, 226 S.W. 189 (1920); Cunningham v. State, 5 Storey (Del.) 475, 188 A.2d 359 (1962); Traxler v. State, 96 Okla. Crim. 231, 251 P.2d 815 (1952).

[15] 386 U.S. 213 (1967).

[16] Iva Ikuko Toguri D'Aguino v. United States, 192 F.2d 338 (9th Cir. 1951) *Cert. denied* 343 U.S. 935 (1952). While the court has not yet decided whether this interpretation of the Sixth Amendment right is also applicable to the states, the tendency in all of the due process cases has been to carry over the federal requirements full blown to the states.

such an argument is obvious. First, it is certainly an axiom in our system that the prosecuting agency has the responsibility of bringing the defendant to trail. It seems too obvious to have to explain this to law enforcement officers. As one court put it, "We will not put a price tag upon constitutional rights."[17] Secondly, if the agency seriously intends to prosecute the defendant, the question is not whether it must bear the expense but only when it must be borne. Even if the prisoner is forced to complete his sentence before the requesting agency will prosecute, the agency must still pay the expenses of returning him for trial. If the agency does not intend to prosecute the prisoner, then there is no reason for not granting a dismissal of the charges.

The third contention of the filing agencies was that the right of speedy trial was not violated since the agency could not insist as a matter of right that the prisoner be returned for trial. Under present systems, the return of a prisoner for trial is a matter of comity between jurisdictions.[18] But this does not excuse the agency's failure to attempt to secure the prisoner's return. If the confining jurisdiction refuses to grant the request, the agency may have done all it can do. It is unlikely, however, that such a request would be refused. Confining jurisdictions have commonly released prisoners for trial, and some have even established an orderly procedure for their return. In each of the three institutions studied, prison officials indicated that disposition of the detainer, either by dismissal or returning the prisoner for trial, was beneficial to the institution. The improvement in prisoner morale and the removal of maximum custody classification will enable the prison to plan meaningful rehabilitation measures. In addition, prison administrators view detainers as a burdensome clerical headache.[19] Certainly, these officials do not object to the elimination of this "busy work".

The final argument of the agencies was that the delay was due to the prisoner's own wrongdoing in committing the crime for which he was imprisoned. The easiest answer to this contention is that normally it is not the prisoner's incarceration which has caused the delay. When it is determined that the agency could obtain the defendant's return for trial or that it has not attempted to obtain his return, it is the agency's failure to act that results in delay. This is not a situation where the defendant has purposely fled the jurisdiction to avoid trial. The agency knows where he is and knows that it may bring him back for trial whenever it so desires. But this argument suffers from more basic defects. First, it is illogical to allow other offenses to affect the defendant's constitutional rights with regard to the charged offense. It introduces a foreign and unrelated fact into the consideration. The rule limiting the introduction of evidence of prior offenses is the best example of how the courts have treated such an argu-

[17] State ex. rel. Fredenberg v. Byrne, 20 Wis.2d 504, 512, 123 N.W.2d 305 (1963).
[18] Ponzi v. Fessenden, 258 U.S. 254 (1922).
[19] Bennett, *supra* note 5, at 9.

ment. Secondly, the agencies' argument is based upon a limited notion of the purpose of the speedy trial requirement. It is not only a determination that society has an interest in seeing an end to the litigation. The speedy trial guarantee also insures society that something is being done to redress the wrong which was committed. It is the *people* versus the defendant. It too has a right to a reasonably prompt judicial determination of whether the defendant committed the offense. Society's right to a speedy trial—a right which the prosecutor is obligated to preserve — is more important than quibbling over whether the defendant has, in a theoretical sense, caused the delay.

The more recent decisions have uniformly rejected each of these arguments[20] and proceeded to consider the real question of whether the delay was a violation of the defendant's constitutional right to a speedy trial. When an agency commences a criminal prosecution it has a duty to complete that prosecution without any unreasonable delay. The arguments of the agencies are inadequate to make what is an unreasonable delay a reasonable one. In the *Klopfer* case, the Supreme Court held that the granting of the prosecutor's motion for *nolle prosequi* with leave, which allowed him to have the case restored for trial at any time in the future, clearly denied the defendant's right to a speedy trial. Even though the defendant was free to go wherever he wished, the court said:

> The pendency of the indictment may subject him to public scorn and deprive him of employment, and almost certainly will force curtailment of his speech, associations and participation in unpopular causes. By indefinitely prolonging this oppression, as well as the "anxiety and concern accompanying public accusation," the criminal procedure condoned in this case by the Supreme Court of North Carolina clearly denies the petitioner the right to a speedy trial . . .[21]

The consequences of the detainer procedure are certainly more prejudicial to the defendant than those resulting from the *nolle prosequi*. Not only is the defendant not able to go wherever he wishes, the parole ineligibility in some states completely deprives him of his liberty for a prolonged period. The other inequities which result from his arbitrary custodial classification deny him any opportunity for rehabilitation or adjustment. The anxiety and concern of Mr. Klopfer is minimal compared to the psychological effects of a detainer on the prisoner. All of these results are based

[20] State ex. rel. Fredenberg v. Byrne, *supra* note 17; Commonwealth v. McGrath, 348 Mass. 748, 205 N.E.2d 710 (1965); People v. Piscitello, 7 N.Y.2d 387, 165 N.E.2d 849 (1960); State v. Patton, 76 N.J. Super. 353, 184 A.2d 655 (1962); United States v. Maroney, 194 F. Supp. 154 (W.D.Pa. 1961); Taylor v. United States, 238 F.2d 259 (D.C. Cir. 1956); People v. Bryarly, 23 Ill.2d 313, 178 N.E.2d 326 (1961).

[21] *Supra* note 8.

upon the *allegation* of an offense. This is not only poor penology; it is a violation of commonly held notions of due process and equal protection of the law. The actions of a prosecutor and some prison officials have determined the prisoner's guilt and his punishment. The argument has been made that parole and custody classification are matters of legislative grace and as such they are privileges and not rights of the prisoner.[22] But even accepting this characterization, it does not follow that the legislature or its agents may discriminate solely on the basis of a single prosecutor's allegation of what may turn out to be a traffic offense and for which the defendant may never be prosecuted. The legislature could undoubtedly decide not to grant parole at all or to classify all prisoners as maximum custody. But once it has chosen to allow parole and vary custody classifications, it cannot discriminate between prisoners solely on the arbitrary basis of a detainer.

What sort of fair trial can the defendant look forward to if and when one is held? If his sentence is of any length at all, he probably will not be able to find or present any witnesses or exhibits in his behalf. Unless he is unusually wealthy, he cannot afford to retain counsel to preserve the evidence for the duration of his sentence. As the number of detainers on the prisoner increases, the trial on the charge is subsequently moved farther and farther from the time of the alleged offense and the probability of unfairness in the eventual proceeding is increased. During this interval the prosecution has full access to all of the evidence. But if the prosecutor seriously intends to try the defendant, he too has a real interest in an early trial. Proof beyond a reasonable doubt is certainly easier when the evidence is fresh. Obviously, prosecutors have not taken this position. Instead, a defendant who has been confined in another state for an extended period of time is faced with the impossible task of finding some evidence in his behalf. Any opportunity for a fair adversary proceeding is defeated by the act of the prosecutor in filing the detainer.

Solutions

It is clear that the present system is unjust. Three uniform laws have been proposed to alleviate the problems caused by this system. The interstate act, for detainers between states or between a state and the federal government, is called "Agreement on Detainers"[23] and is proposed as a compact. The act requires prison officials to inform prisoners of detainers which are filed against them. A prisoner may then file a formal request for trial on the outstanding charges. The confining jurisdiction agrees to grant temporary custody to the prosecutor for the trial. If the filing juris-

[22] *See* Walther, *Detainer Warrants And The Speedy Trial Provision*, 46 MARQ. L. REV. 423 (1963).

[23] COUNCIL OF STATE GOVERNMENTS, *Agreement On Detainers* (1958). *See* HANDBOOK ON INTERSTATE CRIME CONTROL (Council of State Governments 1966), at 91.

diction fails to bring the defendant to trial within 180 days after the request, the charges are dismissed with prejudice in the filing state and the detainer is no longer valid. Provision is made for extension of this period upon a showing of good cause in court with the defendant or his counsel present. To date, twenty states have enacted this agreement.[24] The federal government has not become a party to it. The other two proposals deal with the disposition of intrastate detainers—those filed by local prosecutors with a prison within the same state. One is the product of the Council of State Governments[25] and the other is proposed by the National Conference of Commissioners on Uniform State Laws.[26] The provisions of both proposals are similar to those of the interstate act except that the time in which a prisoner must be brought to trial is reduced to 90 days.[27] Acceptance of these proposals has been slow. Some states already had similar intrastate legislation before the acts were proposed and are reluctant to change.

Such legislation is undoubtedly the first step toward a solution of the detainer problem but it is not the complete answer. The Michigan experience with the interstate agreement has shown that it does not eliminate inequities within the prison. The custodial classification is still automatically made upon the filing of a detainer and remains in effect at least until trial or dismissal. If the defendant is convicted on the outstanding charge and concurrent service of sentence is not allowed, a second detainer is filed to get custody of the prisoner when he is eventually released and the same ineligibilities attach.

The Michigan experience with its own intrastate act also casts doubt on the proposal's effectiveness in solving the speedy trial problems created by detainers. The Michigan act provides for a 180 day limitation. Under it the number of detainers on file has sharply decreased. However, local prosecutors have succeeded in circumventing the limitation simply by not

---

[24] *See* CAL. PENAL CODE § 1389 (West 1963); CONN. GEN. STAT. REV. § 54-186 (1958); HAWAII REV. LAWS § 250A-1 (Supp. 1965); IOWA CODE § 759A.1 (1966); MD. ANN. CODE art 27 § 616 A (1965); MASS. GEN. LAWS, Special Acts 1965 Ch. 892; MICH. COMP. LAWS § 780.601 (Supp. 1961); MINN. STAT. § 629.294 (Supp. 1967); MONT. REV. CODES ANN. § 94-1101-1 (1963); NEB. REV. STATS. § 29.759 (1963); N. H. REV. STAT. ANN. § 606A (1959); N. J. REV. STAT. § 2A:159A (Supp. 1958); N. Y. CODE OF CRIM. PROC. § 669b (McKinney 1957); N. C. GEN. STATS. § 148-89 (1965); PA. STAT. TIT. 19, § 1431 (1959); R. I. SESS. LAW 1967 225A; S. C. CODE ANN. § 17-221 (Supp. 1965); UTAH CODE ANN. § 77-65-4 (1967); VT. STAT. ANN. Cit. 28, § 1301 (1967); WASH. LAWS 1967 Ch. 34.

[25] *See* note 23 *supra*, at 116.

[26] NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, UNIFORM MANDATORY DISPOSITION OF DETAINERS ACT (1958).

[27] The Council of State Governments' proposal does not suggest a specific limitation but leaves it to the individual state legislature to decide what is a reasonable time. The Commissioners on Uniform State Laws' proposal also provides that if prison officials fail to notify the prisoner of a detainer within one year, the charges are dismissed with prejudice.

filing their detainers until shortly before the prisoner is scheduled to be released. Thus, in addition to the ordinary problems caused by delay, the defendant is without any notice that charges are outstanding against him. The same type of tactic is possible under any of the proposed uniform acts.

The proposed legislation is an excellent starting point for remedying the problems caused by the indiscriminate use of detainers. But the speedy trial problem can only be effectively resolved if a further provision is enacted. To prevent prosecutors from circumventing the statute by last minute filing, the act should require jurisdictions with outstanding charges against a prisoner to file their detainers within a statutory time after they have notice of the imprisonment of the defendant. Failure to do so should be adequate grounds for dismissal. Such a requirement is not unduly harsh. It would only insure the defendant's right to a speedy trial and force the prosecutor to perform his obligations. Furthermore, as the Michigan experience indicates, the problem of prison inequities is not solved under the proposed legislation. The only answer to this situation seems to be reform within the prison system. Unless the rehabilitative aspect of criminal correction is to be completely abandoned, prison officials must adopt a reasonable program of parole eligibility and custodial classification based upon the objective evaluation of the prisoner and not upon the whim of a distant prosecuting attorney.