

Chapter 134

1971 REPLACEMENT PART

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COMPROMISE

134.010 Crimes subject to being compromised. When a defendant is held to answer on a charge of misdemeanor for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised, as provided in ORS 134.020, except when it was committed:

- (1) By or upon an officer of justice while in the execution of the duties of his office;
- (2) Riotously; or
- (3) With an intent to commit a felony.

134.020 Satisfaction of injured person; discharge of defendant. If the party injured appears before the court at which the defendant is bound to appear, at any time before trial on an indictment for the crime, and acknowledges in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs and expenses incurred, order all further proceedings to be stayed upon the prosecution and the defendant to be discharged therefrom; but the order and the reasons therefor must be entered in the journal.

134.030 Discharge as bar to prosecution. The order authorized by ORS 134.020, when made and entered, is a bar to another prosecution for the same crime.

134.040 Exclusiveness of procedure. No crime can be compromised nor can any proceeding for the prosecution or punishment thereof be stayed upon a compromise, except as provided in ORS 134.010 to 134.160.

DISMISSAL

134.110 Delay in finding indictment. When a person has been held to answer for a crime, if an indictment is not found against him within 30 days after the person is held to answer, the court shall order the prosecution to be dismissed, unless good cause to the contrary is shown.
[Amended by 1959 c.638 §15; 1971 c.286 §1]

134.120 Delay in bringing defendant to trial. If a defendant indicted for a crime, whose trial has not been postponed upon his application or by his consent, is not brought to trial within a reasonable period of time,

the court shall order the indictment to be dismissed.

[Amended by 1959 c.638 §16]

134.130 Where there is reason for the delay. If the defendant is not indicted or tried, as provided in ORS 134.110 and 134.120, and sufficient reason therefor is shown, the court may order the action to be continued and in the meantime may discharge the defendant from custody on his own undertaking of bail for his appearance to answer the charge or action at the time to which the same is continued.

[Amended by 1959 c.638 §17]

134.140 Effect of dismissal. (1) If the court directs the charge or action to be dismissed, the defendant, if in custody, shall be discharged. If he has been admitted to bail, his bail is exonerated and money deposited in lieu of bail shall be refunded to him.

(2) An order for the dismissal of a charge or action, as provided in ORS 134.010 to 134.160, is a bar to another prosecution for the same crime if the crime is a misdemeanor; but it is not a bar if the crime charged is a felony.

134.150 Dismissal on motion of court or district attorney. The court may, either of its own motion or upon the application of the district attorney, and in furtherance of justice, order an action, after indictment, to be dismissed; but in that case, the reasons of the dismissal shall be set forth in the order, which shall be entered in the journal.

134.160 Nolle prosequi; discontinuance by district attorney. The entry of a nolle prosequi is abolished, and the district attorney cannot discontinue or abandon a prosecution for a crime, except as provided in ORS 134.150.

PROSECUTION OF PRISONERS

134.510 Notice requesting early trial on pending charge. (1) Any inmate of the Oregon State Penitentiary or the Oregon State Correctional Institution against whom there is pending at the time of commitment or against whom there is filed at any time during imprisonment, in any court of this state, an indictment, information or criminal complaint charging him with the commission of a crime, may give written notice to the district attorney of the county in which the

inmate is so charged requesting the district attorney to prosecute and bring him to trial on the charge forthwith.

(2) The notice provided for in subsection (1) of this section shall be signed by the inmate and set forth the place and term of imprisonment. A copy of the notice shall be sent to the court in which the inmate has been charged by indictment, information or complaint.
[1955 c.387 §1]

134.520 Trial within 90 days of notice unless continuance granted. (1) The district attorney, after receiving a notice requesting trial under ORS 134.510, shall, within 90 days of receipt of the notice, bring the inmate to trial upon the pending charge.

(2) A continuance may be granted upon the request of the district attorney and with the consent of the inmate. The court shall grant any continuance with the consent of the defendant. The court may grant a continuance on motion of the district attorney for good cause shown. The fact of imprisonment is not good cause for the purposes of this subsection.
[1955 c.387 §2]

134.530 Dismissal of criminal proceeding not brought to trial within allowed time. On motion of the defendant or his counsel, or on his own motion, the court shall dismiss any criminal proceeding not brought to trial in accordance with ORS 134.520.
[1955 c.387 §3]

134.540 Presence of prisoner at proceedings. (1) Whenever the presence of an inmate of the Oregon State Penitentiary or the Oregon State Correctional Institution is necessary in any criminal proceeding under ORS 134.510 to 134.570, the court wherein the inmate is charged with the commission of a crime may issue an order directing the Superintendent of the Oregon State Penitentiary or the Superintendent of the Oregon State Correctional Institution to surrender the inmate to the sheriff of the county where the inmate is to be tried.

(2) The costs of transportation and maintenance of any inmate removed under this section from the penitentiary or correctional institution shall be paid by the county where the inmate is charged with commission of a crime.

(3) At the conclusion of any criminal proceeding under ORS 134.510 to 134.570, notwithstanding the provisions of ORS

137.140 or 137.150, the inmate shall be returned by the sheriff to the institution from which he was removed, there to serve the balance of the unexpired sentence and any other term imposed under any additional sentence.

(4) The time during which an inmate is in the custody of the sheriff under this section is part of and shall be counted as time served under the original sentence.
[1955 c.387 §4]

134.550 Release of prisoner on bail prohibited. No inmate in the custody of a sheriff under ORS 134.540 shall be released on bail pending a criminal proceeding under ORS 134.510 to 134.570 or any appeal therefrom.
[1955 c.387 §5]

134.560 District attorney to furnish certain documents. The district attorney shall, in all proceedings against inmates under ORS 134.510 to 134.570, obtain for and furnish to the court a certified copy of the judgment, sentence or commitment order pursuant to which the inmate is imprisoned in the penitentiary or correctional institution.
[1955 c.387 §6]

134.570 [1955 c.387 §6; repealed by 1961 c.520 §1]

AGREEMENT ON DETAINERS

134.605 Agreement on Detainers. The Agreement on Detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

AGREEMENT ON DETAINERS

The contracting states solemnly agree that:
ARTICLE I

The party states find that charges outstanding against a prisoner, detainees based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainees based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainees, when emanating from

another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III of this agreement or at the time that a request for custody or availability is initiated pursuant to Article IV of this agreement.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV of this agreement.

(d) "Penal or correctional institution" of this state shall mean the Oregon State Penitentiary or the Oregon State Correctional Institution.

ARTICLE III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: Provided, that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) of this Article shall be given or sent by the prisoner to the warden or other official having custody of him, who shall promptly forward it together with the certificate to the prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) of this Article shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) of this Article shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) of this Article, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his

presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) of this Article shall void the request.

ARTICLE IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with paragraph (a) of Article V of this agreement upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: Provided, that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; And provided further, that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) of this Article, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner. Such authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainees against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good

cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) of this Article, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to paragraph (e) of Article V of this agreement, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

(a) In response to a request made under Article III or Article IV of this agreement, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his 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.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of such prisoner, or in the event that an action on the indictment, information or complaint

on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV of this agreement, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

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

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a dif-

ferent allocation of costs and responsibilities as between or among themselves. Nothing contained in this paragraph shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of such time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

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

ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the agreement into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the agreement. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by prisoners or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency,

person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party to this agreement, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[1969 c.362 §1]

134.615 Definition for ORS 134.605. As used in the Agreement on Detainers, the term "appropriate court" means any court of this state that has criminal jurisdiction.

[1969 c.362 §2]

134.625 Enforcement of ORS 134.605 by public agencies. All courts, departments, agencies, officers and employes of this state and its political subdivisions are hereby directed to enforce the Agreement on Detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purposes.

[1969 c.362 §3]

134.635 Effect of escape from custody in another state. Escape from custody while in another state pursuant to the Agreement on Detainers is an offense against the laws of this state to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provision of the Agreement on Detainers and shall be punishable in the same manner as an escape from such institution.

[1969 c.362 §4]

134.645 Surrender of custody under ORS 134.605. It shall be lawful and mandatory upon any official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the Agreement on Detainers.

[1969 c.362 §5]

134.655 Administrator of agreement; appointment; duties. The Governor may appoint an administrator who shall perform the duties and functions and exercise the powers conferred upon such person by Article VII of the Agreement on Detainers.

[1969 c.362 §6]

134.665 Notice of request for temporary custody; prisoner's rights. In order to implement paragraph (a) of Article IV of the Agreement on Detainers, and in furtherance of its purposes, the appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request, notify the prisoner and the Governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of such request. The authorities having custody of the prisoner shall also advise him in writing of his rights to counsel, to make representations to the Governor within 30 days, and to contest the legality of his delivery.

[1969 c.362 §7]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
on December 1, 1971.

Robert W. Lundy
Legislative Counsel

