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<p align="center"> ICAOS Advisory Opinion Issued by: Executive Director-Don Blackburn Chief Legal Counsel: Richard L Masters </p>			
State Requesting Opinion North Carolina		Dated: 9/7/2006	
Description Clarification of Rule 4.112			

Background & History


Pursuant to Commission Rule 6.101(c) the State of North Carolina has requested an Opinion regarding Commission Rule 4.112. North Carolina inquires as follows::

North Carolina is respectfully requesting an interpretation of Rule 4.112, Closing supervision by the receiving state, specifically (a) (2) and (3) (A) and (B) of the rule.

If a receiving state closes interest pursuant to the above rules, is the offender still subject to retaking under the compact agreement if located by the receiving state? If not, what assurance does the receiving state have that the offender will leave the state or that the sending state will order the return of the offender?

ICAOS Rule 4.112 states:

- (a) The receiving state may close it's supervision of an offender and cease supervision upon :
 - (1) The date of discharge indicated for the offender at the time of application for supervision unless informed of an earlier or later date by the sending state;
 - (2) Notification to the sending state of the absconding of the offender from supervision in the receiving state;
 - (3) (A) Notification to the sending state of the sentencing of the offender to incarceration for 180 days or longer and receipt from the sending state of a warrant and detainer or other acknowledgement by the sending state of responsibility for the offender within 90 days of the notification. If the sending state fails to provide the warrant and detainer or other acknowledgement within 90 days of notification, the receiving state may close its supervision of the offender.
 - (B) After 90 days the sending state shall be responsible for the offender.
 - (4) Notification of death; or
 - (5) Return to sending state.

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Analysis and Conclusion

This rule, with the possible exception of a discharge of the offender from supervision pursuant to the offender's original application as provided in 4.112 (a)(1), does not determine whether an offender is subject to the compact. The purpose of the rule is to allow a receiving state to close an offender's file when supervision becomes impossible due to absconding supervision (per subsection (a)(2); or failure of the sending state to provide warrant and detainer (per subsection (a)(3); notification of death (per subsection (a)(4); or return of the offender to the sending state (per subsection (a)(5). Thus, the closing of supervision by the receiving state under Rule 4.112 does not preclude the offender from being subject to the jurisdiction of the compact unless the original terms of supervision under which the offender became eligible for supervision have expired as provided in subsection (a)(1).

Whether the offender flees the original receiving state and is apprehended in a third state or is apprehended in the original receiving state, Article I of the Compact and Rule 5.107 specifically authorize officers of a sending state to enter a state where the offender is found and apprehend and retake the offender notwithstanding case closure under Rule 4.112 with the exception of cases in which the original term of supervision has expired.