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<b>State Requesting Opinion</b> Utah		<b>Dated:</b> <u>April 15, 2004</u>	
<b>Description</b> Issuing travel permits to the Receiving state during the investigation period.			

### **Background**

The State of Utah Deputy Compact Administrator reported that during the investigation pursuant to the Transfer Request from Minnesota, the above offender reported to the field office. Utah had previously denied reporting instructions for the offender. Utah argues that it was their interpretation of the compact that offenders could not travel to the receiving state once an application for Compact had been sent.


The State of Minnesota Deputy Compact Administrator reported the transfer request had been submitted to Utah on March 9, 2004. On March 30<sup>th</sup>, 2004 the agent issued a 15 day travel permit for the offender to travel to Utah for a family visit from April 7, 2004 returning April 21, 2004. The offender had to have a return bus ticket before the agent would consider allowing him to visit Utah. The Minnesota compact office received the email from Utah on April 14<sup>th</sup> indicating that the offender had been issued the 15 day travel permit to visit his family pending investigation. The offender did return to Minnesota on April 21, 2004 as his travel permit indicated.

Minnesota argues that the current rules are silent on temporary travel except in victim sensitive cases. Minnesota claims that they and their surrounding border states were unaware that offenders could not temporarily visit a state during the investigation as long as the offender did not relocate.

### **Discussion**

The rules that currently govern the Interstate Compact for Adult Offender Supervision are the transition rules adopted by the commission in November 2002. This issue is partially addressed in rule 4-106

2) *Provisional travel permits may be issued by a sending state to allow a parolee or probationer to proceed to a receiving state prior to completion of an investigation and formal acceptance of the case in emergency situations.*

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Rule 4-106(1) refers to travel permits being authorized by the receiving state in appropriate cases to *make temporary visits out of the receiving state, not exceeding thirty days in length.*

Rule 4-106(2) states that provisional travel permits may be used when travel is authorized by a sending state to proceed to a receiving state. It emphasizes *the precautions outlined in Section 3-101 shall be observed by the sending state Administrator before authorizing travel in these cases.*


Rule 3-101 states *in all cases except emergency and court ordered transfers, the receiving state shall be given the opportunity to investigate the prospective plan of the individual prior to movement to the receiving state.*

While it may be argued the transition rules governing the compact until August 1, 2004 are not entirely clear in regards to temporary travel to the receiving state during the investigation, practice has set forth that it is not acceptable. To the best of the Executive Director's knowledge since 1989 and the knowledge of Milt Gilliam, former rules committee chair, the practice that has been consistently taught is that once an offender has made application through the compact they may not travel to the prospective receiving state during the investigation without the permission of the receiving state. I believe this is consistent with the intent under 3-101 and 4-106 when it refers to "emergency situations".

If this was not the practice states would issue travel permits to get around the requirements for reporting instructions. The intent behind the rule of not allowing an offender to proceed prior to the receiving state having an opportunity to investigate was to not have the offender in the receiving state prior to supervision without the receiving states permission, knowledge or have the opportunity to investigate.

### **New Rules**

There is little question what the intent is regarding this matter under the new rules that will take effect August 1, 2004.

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“SEC 2.110:

*No state shall permit a person who is eligible for transfer under this compact to relocate to another state except as provided by the Interstate Compact for Adult Offender Supervision and these rules.”*

“SEC 3.102


- (a) *Subject to the exception in sec 3.103 (b), a sending state seeking to transfer supervision of an offender to another state shall submit a completed transfer request with all required information to the receiving state prior to allowing the offender to **LEAVE** the sending state. Emphasis added.*
- (b) *Subject to the exception in sec 3.103, the receiving state shall be given the opportunity to investigate the proposed plan of supervision prior to allowing the offender to **LEAVE** the sending state.” Emphasis added.*

The emphasis in the new rules is to establish a continuum of supervision. There is emphasis on the word leave because the drafting team did not want the offender to be in the receiving state during the investigation without the receiving state’s permission.

The new rules have attempted to ensure a continuum of supervision by means of the receiving state assuming the supervision when the offender leaves the sending state. Sec.3.103 (b)(3) of the new rules states, “*Upon receipt of notification and verification by the sending state of residency, a receiving state shall assume responsibility for supervision of an offender who is granted a travel permit during the investigation of the offender’s plan of supervision.*”

The proposed practice by Minnesota would undermine the issuance of reporting instructions. Why would a sending state even ask for reporting instructions if they could issue temporary travel permits during the investigation? An agent could conceivably continue to issue travel permits during the entire time of the investigation.

There does seem to be some confusion created by the definition of Temporary Travel permits in Sec. 1.101. (cc). “*Temporary travel permit means, for the purposes of sec. 3.108 (b), the written permission granted to an offender, whose supervision has been*

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*designated a “victim-sensitive” matter, to travel outside the supervising state for more than 24 hours but no more than 31 days. A temporary travel permit shall include a starting and ending date for travel.”*

There seems to be a need to clarify in the rules when temporary travel is permitted or not permitted in non-victim sensitive cases. Under Sec. 3.103, regarding exceptions, it states:

*“(B) The receiving state shall issue provisional reporting instructions no later than two business days following receipt of such notification and request from the sending state.”*

*“(C) No travel permit shall be granted by the sending state until provisional reporting instructions are received from the receiving state.”*


In Section 1.101, “travel permit” is defined as:

*“The written permission granted to an offender authorizing the offender to relocate from one state to another.”*

In regard to this matter, states have argued that relocation is not defined; consequently, a temporary travel permit is not to relocate but to visit another state.

There seem to be several areas within the rules discussed that needs to be clarified by the Commission. One has to do with the use of temporary travel permits during the period of investigation and the other is in regard to the definition of relocate.

The Executive Director’s duty is to attempt to preserve the integrity of the intent of the rules as they have been written until they can be changed if necessary. In regard to temporary travel, it is clear from my consulting with the chair of the Rules Committee that the intent was that an offender not be allowed to travel to the receiving state once a transfer request had been submitted. I believe the use of temporary travel permits undermines the integrity of the exception put forth in rule Sec. 3.103 (b). In the past many states passed laws prohibiting an offender from being in their states without permission, and one could argue that they would not request reporting instructions if they could issue temporary travel permits during the investigation period.

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If that is a concept the Commission wants to allow, I would suggest specifics need to be written into a rule governing the length, frequency, and notification of temporary travel. States made it quite clear during the rule drafting process that they did not want offenders in their states without permission. They were frustrated with the practice of allowing offenders to travel prior to the completion of the investigation and finding them in their state during the investigation without their permission. The Commission will have to determine the specific direction they want to pursue in this regard.

For the purpose of this decision, I feel obligated to protect the integrity of the intent of the rules as drafted and not make a decision that would obviously have tremendous impact on the “Request for Reporting Instructions” requirements. I am recommending to the Executive Committee that they assign the Rules Committee to address these issues brought forth.

**Conclusion**

The opinion of the Executive Director is that under the transition rules practice and under the new rules to take effect August 1, 2004, once an application has been made under the compact the offender may not travel to the receiving state without the receiving state’s permission.