	Interstate Commission for Adult Offender Supervision	Opinion Number 3-2007	Page Number: 1
<p align="center"> ICAOS ADVISORY OPINION Issued by: Acting Executive Director- Ashley Hassan Chief Legal Counsel: Richard L Masters </p>			
States Requesting Opinion Pennsylvania		Dated: 9/17/2007	
Description Request for Opinion as to Denial of Reporting Instructions			

Background

The State of Pennsylvania has requested an advisory opinion pursuant to Rule 6.101 concerning the denial of reporting instructions under Rule 3.103 (a)(2) for failure to comply with the requirements of Rule 3.101(b).

Compact Rule 3.101, Mandatory transfer of supervision, provides as follows:

Rule 3.101, Mandatory transfer of supervision:


At the discretion of the sending state, an offender shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the offender:

- (a) has more than 90 days or an indefinite period of supervision remaining; and
- (b) has a valid plan of supervision; and
- (c) is in substantial compliance with the terms of supervision in the sending state; and
- (d) is a resident of the receiving state; or
- (e) (1) has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and
(2) can obtain employment in the receiving state or has a means of support.

Rule 3.103, Reporting Instructions; Probation Exception to Rule 2.110 provides as follows:

Compact Rule 3.103, Reporting Instructions; Probation Exception to Rule 2.110

(a)(1) A reporting instructions request for an offender who was living in the receiving state at the time of sentencing shall be submitted by the sending state within seven calendar days of the sentencing date or release from incarceration to probation supervision. The sending state may grant a seven-day travel permit to an offender who was living in the receiving state at the time of sentencing. Prior to granting a travel permit to an offender, the sending state shall verify that the offender is living in the receiving state.

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(a)(2) The receiving state shall issue reporting instructions no later than 2 business days following receipt of such request from the sending state.


Pennsylvania in its request for an advisory opinion states that it “has been challenged” for its’ denial of reporting instructions for sex offenders or domestic violence offenders living in Pennsylvania at the time of sentencing based on investigations of home plans for such offenders establishing that the offenders would be in close proximity to schools, daycares, playgrounds etc. or would be living in the same residence as a victim. In such cases Pennsylvania has based such denials of the requests for reporting instructions on Rule 3.101(b) in that such offenders are not eligible for transfer due to the failure of the sending state to establish that the offenders have a valid plan of supervision.

Thus, Pennsylvania seeks an advisory opinion as to whether such circumstances permit the receiving state to deny reporting instructions to offenders who are living in the receiving state at the time of sentencing based upon an investigation which reveals that an offender does not have a valid plan of supervision as required by Rule 3.101 (b).

Analysis and Conclusion

In addressing this question it is important to note while the residency criteria set forth in Rule 3.101(a) differentiates between offenders qualifying for transfer based on residency in the receiving state under Rule 3.101(d) from offenders qualifying for transfer based on having resident family and obtaining employment under Rule 3.101(e)(1) and (2), this distinction does not negate the general requirements of Rule 3.101(a) through (c) including ‘a valid plan of supervision.’ This issue was also addressed in Advisory Opinion 7-2005.

Thus it is clear that the literal language and plain meaning of these rules requires that all mandatory transfers under Rule 3.101 are subject to the requirement of a valid plan of supervision. While the ICAOS Rules do not specifically itemize every circumstance which would invalidate a plan of supervision, as Pennsylvania points out, where an investigation of a home plan reveals that a sex offender or domestic violence offender is living in the same home as a victim or in close proximity to a school, daycare or


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playground such grounds have frequently been used in other jurisdictions as a basis for denial of eligibility for a mandatory transfer under Rule 3.101(b) for failure to provide a valid plan of supervision.

While Pennsylvania focuses its request on whether reporting instructions can be denied in such cases, instead it is the application for transfer which would presumably be denied under Rule 3.101(b) in the circumstances described. The provisions of Rule 3.103(e)(1) clearly require that an offender who has been granted reporting instructions prior to the investigation of a transfer request must return to the sending state upon rejection of the transfer request by the receiving state. An offender who fails to comply with the order of the sending state to return is required to be retaken by the sending state under Rule 3.103(e)(2). The provisions of Rule 3.103(e)(1) and (2) are premised on the proposition that the offender's continued lawful presence in the receiving state under the compact ultimately depends upon the determination of the offender's eligibility for transfer. If an investigation by the receiving state reveals a failure to provide a valid plan of supervision the application for transfer could properly be denied. If this determination is made prior to the expiration of the time frames set forth in Rule 3.103(a), the issuance of reporting instructions has become moot. If the investigation has not been completed, reporting instructions are required to be issued as provided in Rule 3.103(a). Upon completion of the investigation, if the receiving state subsequently denies the transfer request on the same basis or upon failure to satisfy any of the other requirements of Rule 3.101, the provisions of Rule 3.103(e)(1) and (2) clearly require the offender to return to the sending state or to be retaken upon the issuance of a warrant.

Summary

In summary, where an investigation by the receiving state reveals that a transfer request for an offender living in the receiving state at the time of sentencing does not comply with the provisions of Rule 3.101(b) which requires a valid plan of supervision, a receiving state may properly deny the transfer request. If this determination is made prior to the expiration of the time frames set forth in Rule 3.103(a) the issuance of reporting instructions to such an offender has become moot. If the investigation has not been completed, reporting instructions are required to be issued as provided in Rule 3.103(a). Upon completion of investigation, if the receiving state subsequently

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denies the transfer on the same basis or upon failure to satisfy any of the other requirements of Rule 3.101, the provisions of Rule 3.103(e)(1) and (2) clearly require the offender to return to the sending state or be retaken upon issuance of a warrant.