



**Interstate Commission for
Adult Offender Supervision**

Opinion Number

4-2012

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ICAOS Advisory Opinion

Issued by:

Executive Director Harry E. Hageman and Chief Legal Counsel Richard L. Masters

State Requesting Opinion: Minnesota

Dated: 10/11/2012

Description:

Whether or not the definition of the term 'Relocate' in ICAOS Rule 1.101 and as applicable in ICAOS Rule 2.110, should be interpreted to mean that an offender may not proceed and remain in another state for a cumulative period exceeding 45 days in any twelve month period without being in violation of ICAOS Rule 2.110?

Background:

Pursuant to ICAOS Rule 6.101, the State of Minnesota has requested a formal opinion as to whether or not the definition of the term 'Relocate' in ICAOS Rule 1.101 should be interpreted to mean that an offender may not proceed and remain in another state for a cumulative period exceeding 45 days in any twelve-month period without benefit of reporting instructions and/or formal acceptance of transfer. Minnesota states that its interpretation is that an offender may not proceed and remain in another state for a cumulative period exceeding 45 days in any twelve-month period without reporting instructions and/or formal acceptance of transfer. Minnesota also states that there are other states which do not interpret the definition of 'Relocate' to limit the time period within which an offender may be allowed to proceed and remain in another state without reporting instructions or formal acceptance of transfer to a cumulative period of 45 days in any twelve-month period leading to disparate application of ICAOS Rule 2.110.


Thus, Minnesota poses the question, whether a state would be in violation of ICAOS Rule 2.110 if permitting an offender to proceed to another state for multiple periods of time, never exceeding 45 consecutive days in any single occurrence, as long as the offender returns to the original state for at least one 24 hour period prior to the expiration of each 45 consecutive day travel event, while issuing a second or subsequent 45 day maximum travel permit(s) to return to that specific state, without benefit of transfer under the applicable Compact Rules.

Issue:

Whether or not the definition of the term 'Relocate' in ICAOS Rule 1.101, and as applicable in ICAOS Rule 2.110, should be interpreted to mean that an offender may not proceed and remain in another state for a cumulative period exceeding 45 days in any twelve month period without being in violation of ICAOS Rule 2.110?

Applicable Compact Provisions and Rules:

The ICAOS provisions and rules, which are implicated in the request, include the following:

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Rule 1.101 “Relocate” means to remain in another state for more than 45 consecutive days in any twelve-month period.

Rule 2.110 “Transfer of offenders under this compact”

- (a) No state shall permit an offender who is eligible for transfer under this compact to relocate to another state except as provided by the Compact and these rules.

Analysis and Conclusions

“Relocate” is defined under ICAOS Rule 1.101 as remaining in another state **“for more than 45 consecutive days in any twelve-month period.”** (emphasis added).

While the term ‘consecutive,’ contained in the foregoing definition is not defined in the ICAOS Rules, under accepted maxims of statutory constructions, in the absence of a special definition contained in the statute or regulation, words are defined using their ordinary or commonly accepted meaning. As the U.S. Supreme Court has long held, “In cases of statutory construction, we begin with the language of the statute. Unless otherwise defined, ‘words will be interpreted as taking their ordinary, contemporary, common meaning,’” *Diamond v. Diehr, 450 U.S. 175, 182 (1981), quoting Perrin v. United States, 444 U.S. 37, 42 (1979)*. In the case of the word ‘consecutive,’ it is defined as “following one after the other in order.” *See Merriam-Webster’s Dictionary 2012*.

Minnesota’s proffered interpretation is certainly consistent with the public safety concerns served by the Compact. However, the Commission chose to use the word ‘consecutive’ rather than ‘cumulative’ in defining the term ‘Relocate’ with respect to the number of days in which an offender could remain in another state before having ‘relocated’ under the compact.

As the U.S. Supreme Court has further determined with respect to statutory construction, “Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning ... [O]ur inquiry must cease if the statutory language is unambiguous and



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the statutory scheme is coherent and consistent.” See *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997).

Thus, while such a practice may be subject to criticism based on public safety concerns, the current definition of “Relocate” does not appear to limit the cumulative number of days within which an offender may be permitted to remain in another state to a total of 45 cumulative days during the same 12 month period.