



**Interstate Commission
for Adult Offender Supervision
ADVISORY OPINION**

Opinion Number: 2-2012

Dated: April 20, 2012

Issued by:

Harry E. Hageman, Executive Director

Richard L. Masters, Legal Counsel

State Requesting: Arizona

Description: Can a receiving state's acceptance of an application for transfer of supervision under ICAOS Rule 3.105 (a) or approval of reporting instructions be the cause of a release of an offender from a correctional facility which would otherwise keep the offender incarcerated?

Background & History:

Pursuant to Commission Rule 6.101(c) the State of Arizona has requested an advisory opinion regarding the requirements of the Compact and ICAOS Rules on the following issue:

Issue:

Whether a receiving state's acceptance of a transfer request under ICAOS Rule 3.105 (a) or approval of reporting instructions be the cause of a release of an offender from a correctional facility which would otherwise keep the offender incarcerated? Arizona reports that several states, including Arizona, have interpreted Rule 3.105 (a) to mean that a receiving state's acceptance or approval of reporting instructions creates the "planned release date." Examples provided by Arizona of some of the court orders, conditions of probation and conditions of prison release from other states, including Arizona are as follows:

- "Parole out of state only to name of receiving state"
- "Interstate compact to name of receiving state only"
- "Preauthorized release only to name of receiving state"
- "Can parole to the following state only"
- "Probationer is sentenced to 120 days jail as a condition of probation. Probationer can be released prior to 120 days only after acceptance by name of receiving state"

Applicable Rules:

Rule 3.105 (a) provides:

"Rule 3.105 Request for transfer of a paroling offender

(a) A sending state may submit a completed request for transfer of supervision no earlier than 120 days prior to an offender's planned release from a correctional facility.

Analysis

The unambiguous text of Rule 3.105 (a) provides the sending state with the discretion to submit a completed request for transfer of supervision as early as 120 day prior to an offender's planned



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release date. Implicit in the exercise of this prerogative is the assumption that a release date has already been determined. Nothing in the language of the rule provides a basis for the conclusion that the date of acceptance of a completed transfer request by the receiving state or approval of reporting instructions will be the means of determining whether the offender in question will be released or the 'planned release date.' If this had been the Commission's intention it could have easily said so.

As the Supreme Court has explained concerning the proper approach to interpretation of statutes or related regulations, "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 the statutory scheme is coherent and consistent." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997) (internal quotation marks omitted).

Moreover, it is questionable whether the Commission could exercise the authority to determine the release date of an offender by means of this rule, even if it had the intention to do so. The intent of the Compact is not to dictate sentencing or place restrictions on judicial discretion relative to sentencing, nor the determination of eligibility for parole including the date of release from a correctional facility. See *Scott v. Virginia*, 676 S.E.2d 343, 348 (Va. App. 2009).

Additionally under ICAOS Rule 4.102 the sending state is in exclusive control of the duration of supervision including the dates upon which supervision begins and ends. An interpretation of Rule 3.105 (a) that the date of acceptance of a supervision transfer request or approval of reporting instructions constitutes the 'planned release date' would in effect empower the receiving state to determine when supervision begins and would be in direct conflict with Rule 4.102.

Conclusion

In summary, based upon the terms of the compact, the above referenced rules and the legal authorities cited herein, under ICAOS Rule 3.105 (a) neither the acceptance of a request for transfer by a receiving state nor approval of reporting instructions can be the basis for either the determination of whether the sending state will release an offender from a correctional facility or the planned release date.