



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

Opinion Number: 4-2010

Dated: July 15, 2010

Revised: May 15, 2019

Issued by:

Harry E. Hageman, Executive Director

Richard L. Masters, Legal Counsel

State Requesting: ICAOS Western Region States

Description: The effect on Compact supervision cases of a Washington statute providing that the Department of Corrections is not authorized to supervise certain offenders sentenced to a term of community custody, community placement, or community supervision.

Background & History:

Pursuant to Commission Rule 6.101(c) the States comprising the Western Region of the Interstate Commission for Adult Offender Supervision have requested an advisory opinion regarding the requirements of the Compact and ICAOS Rules on the following:

In 2009, the Washington State Legislature enacted a statute classifying felony and misdemeanor offenders eligible for community supervision by the Department of Corrections (DOC). *See RCW 9.94 A.030 et seq.* To prioritize resources required for the highest risk offenders, the department evaluates offenses and supervision requirements using evidenced-based practices and a static risk assessment tool developed by the Washington State Institute for Public Policy (WSIPP). Under the provisions of this statute, the DOC only has authority to supervise offenders convicted of a specific type of crime or offenders with an assessed high risk to re-offend.

Issue:

What is the effect on Compact supervision cases of a Washington statute providing that the Department of Corrections is not authorized to supervise certain offenders sentenced to a term of community custody, community placement, or community supervision?

Rules:

Rule 1.101 provides:

“Supervision” means the oversight exercised by authorities of a sending or receiving state over an offender for a period of time determined by a court or releasing authority, during which time the offender is required to report to or be monitored by supervising authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the offender at the time of the offender’s release to the community or during the period of supervision in the community.”

Rule 4.101 provides:

A receiving state shall supervise offenders consistent with the supervision of other similar offenders sentenced in the receiving state, including the use of incentives,



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

Opinion Number: 4-2010

Dated: July 15, 2010

Revised: May 15, 2019

Issued by:

Harry E. Hageman, Executive Director

Richard L. Masters, Legal Counsel

State Requesting: ICAOS Western Region States

Description: The effect on Compact supervision cases of a Washington statute providing that the Department of Corrections is not authorized to supervise certain offenders sentenced to a term of community custody, community placement, or community supervision.

corrective actions, graduated responses, and other supervision techniques.

Supplemental Information:

Under the terms of the Washington statute, and pursuant to ICAOS Rule 4.101, Washington matches the out-of-state conviction to a similar Washington criminal offense. In conjunction with the criminal history and risk level of the offender, Washington then determines the level of supervision required for a transferring offender.

Offenders on supervision for the following similar convictions have regular contact with a Washington community corrections officer:

- Murder, First and Second Degree;
- Homicide by Abuse;
- Manslaughter First Degree;
- Assault First Degree;
- Kidnapping in the First Degree;
- Rape in the First Degree;
- Assault of a Child in the First Degree;
- An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies;
- Federal or out of state conviction for an offense that under the laws of Washington would be a felony as classified above; and/or
- Sex offense(s).

The Washington DOC also indicated that interstate felony offenders on supervision for the following similar convictions are under kiosk-only reporting requirements (unless the offender scores at a high risk to re-offend based on Washington's risk assessment tool):

- Arson First and Second;
- Bail Jumping with Murder First Offense;
- Burglary First Degree;
- Homicide by Watercraft by being under the influence of intoxicating liquor or drugs, by a disregard for the safety of others, or by operating a vessel in a reckless manner;
- Leading Organized Crime;
- Malicious Explosion First or Second;



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

Opinion Number: 4-2010

Dated: July 15, 2010

Revised: May 15, 2019

Issued by:

Harry E. Hageman, Executive Director

Richard L. Masters, Legal Counsel

State Requesting: ICAOS Western Region States

Description: The effect on Compact supervision cases of a Washington statute providing that the Department of Corrections is not authorized to supervise certain offenders sentenced to a term of community custody, community placement, or community supervision.

- Malicious Placement of Explosives First Degree;
- Over 18 and Delivering Heroin, Methamphetamine, or Narcotic from Schedule I/II, or Flunitrazepam from Schedule IV to Under 18;
- Robbery First and Second Degree;
- Trafficking First and Second Degree;
- Treason;
- Use of Machine Gun in Commission of Felony;
- Vehicular Homicide by being under the influence of intoxicating liquor or any drug, by a disregard for the safety of others, by the operation of a vehicle in a reckless manner;
- Assault Second and Third Degree;
- Drive-by Shooting;
- Extortion First and Second Degree;
- Kidnapping Second Degree;
- Manslaughter Second Degree;
- Vehicular Assault under the influence or by operation in a reckless manner, or driving a vehicle with disregard for the safety of others;
- Identity Theft First and Second Degree;
- Promoting Prostitution First Degree;
- Intimidating a Juror;
- Intimidating a Witness;
- Intimidating a Public Servant;
- Bomb threat (if against a person);
- Unlawful imprisonment;
- Promoting a Suicide Attempt;
- Riot (if against a person);
- Stalking;
- Custodial Assault;
- Certain Domestic Violence Court Order Violations;
- Counterfeiting—Endangering Public Health and Safety;
- Felony Driving a motor vehicle under the influence of intoxicating liquor/drug;
- Felony Physical control of a motor vehicle under the influence of intoxicating liquor/drug;
or
- Other drug offenses not listed previously.



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

Opinion Number: 4-2010
Dated: July 15, 2010
Revised: May 15, 2019

Issued by:
Harry E. Hageman, Executive Director
Richard L. Masters, Legal Counsel

State Requesting: ICAOS Western Region States

Description: The effect on Compact supervision cases of a Washington statute providing that the Department of Corrections is not authorized to supervise certain offenders sentenced to a term of community custody, community placement, or community supervision.

Interstate misdemeanor offenders receive kiosk-only reporting instructions unless the conviction meets the following criteria:

- Communication with a Minor for Immoral Purposes;
- Custodial Sexual Misconduct Second Degree;
- Sexual Misconduct with a Minor Second Degree;
- Failure to Register as a Sex Offender;
- Assault Fourth Degree or Violation of a Domestic Violence court order and a prior conviction for:
 - A Violent Offense (the first nine offenses listed);
 - Sex offense;
 - Above listed felony offenses, excluding drug offenses;
 - Assault Fourth Degree;
 - Violation of a Domestic Violence court order.

All other convictions not listed receive kiosk-only reporting.

Analysis and Conclusion:

When considering statutory provisions and methods of offender classification for Washington supervisory purposes, receiving states must consider that certain offenders convicted and sentenced in Washington who wish to relocate to other states and who have previously been subject to regular reporting to a parole or probation officer would receive minimal supervision, such as kiosk reporting or no supervision at all. Moreover, as a result of the new law, Washington offenders no longer subject to community supervision are no longer subject to the compact's transfer requirements and may relocate without notice.

While this new law does not preclude offenders from transferring their supervision to the State of Washington, it affects the administration of their supervision. Offenders whose supervision transfers from a sending state to Washington for crimes that require reporting to a probation or parole officer may only encounter a requirement to report through kiosk-only provisions.

Nonetheless, even in cases in which the Washington law's supervision requirements are *de minimus*, upon determination of a supervision requirement and with a subsequent transfer under the compact, ICAOS Rule 4.101 requires that the "receiving state shall supervise an offender in a manner . . . consistent with the supervision of other similar offenders sentenced in the



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

Opinion Number: 4-2010

Dated: July 15, 2010

Revised: May 15, 2019

Issued by:

Harry E. Hageman, Executive Director

Richard L. Masters, Legal Counsel

State Requesting: ICAOS Western Region States

Description: The effect on Compact supervision cases of a Washington statute providing that the Department of Corrections is not authorized to supervise certain offenders sentenced to a term of community custody, community placement, or community supervision.

receiving state.” As determined in *ICAOS Advisory Opinion 1-2007*:

By definition, this rule does not permit the receiving state to provide zero supervision and at a minimum, the rules of the compact contemplate that such an offender will be under some supervision for the duration of the conditions placed upon the offender under Rule 4.102.

Therefore, Compact rules still apply for offenders who transfer their supervision to the State of Washington. This includes any conditions imposed on the offender including the transmission of the required arrival and departure notices, the imposition of supervision fees, and collection of restitution, fines, or other costs. Moreover, if necessary, supervision may require violation reports or the offender’s return to the sending state. *See ICAOS Rules, Chapter 4.*

While the specific Washington law excludes the DOC from supervising any offender "sentenced to a term of community custody, community placement, or community supervision or any probationer unless the offender or probationer is one for whom supervision is required (under this act)," no provision of the statute prohibits a sentencing court, which determines such supervision is necessary, from requiring an offender to report directly to the court in lieu of the DOC or for the completion of a behavioral modification program. Notwithstanding the Washington law’s preclusion of supervision, such a case would meet the definition of supervision under the terms of the compact and the rules.