



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

Opinion Number: 7-2004
Dated: November 1, 2004

Issued by:
Don Blackburn, Executive Director
Richard L. Masters, Legal Counsel

State Requesting: Wisconsin

Description: Rejection of transfers based on outstanding Warrants.

Background

Pursuant to ICAOS rule 6.101, The State of Wisconsin has requested a formal opinion regarding the following:

“May a state reject a transfer request from an offender, who is a resident of that state and has verified employment, when there are warrants or pending charges in the receiving state?”

Pennsylvania, Minnesota and several other states have asked for a ruling by the national office to establish consistency in the application of this process.

“Wisconsin states that in one case, the offender was an inmate awaiting release from prison. The transfer request was denied when it was discovered that there were three municipal warrants for the offender in the receiving state. The rejection included the statement that the case would not be accepted until all charges were resolved.

In the second case, reporting instructions were denied due to an outstanding warrant in the receiving state. The offender was allowed to travel to the receiving state to answer the charge against him. The court released the offender with orders that he not leave the state. The charge is still pending. The receiving state rejected his transfer request and has demanded that he be order back to Wisconsin. The receiving state has said he will not be accepted if he has a pending charge. “

Wisconsin maintains that the existence of warrants or pending charges in the receiving state is irrelevant to the transfer decision, when the issuing authority has taken no action to enforce the warrant and/or the offender has been released pending final disposition. If the offender is not in custody, the offender must still be supervised. And, if eligible for transfer under 3.101(a), then the receiving state must accept supervision... To permit this is to allow a state to effect a “banishment order” by simply issuing a warrant, but refusing to have it enforced

Discussion

The rule governing eligibility for transfer is 3.101 which states:

(a) At the discretion of the sending state, an offender who has three months or more or an indefinite period of supervision remaining shall be eligible for transfer of



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supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the offender, pursuant to a valid plan of supervision-

- 1) *Is in substantial compliance with the terms of supervision in the sending state and*
- 2) *Is a resident of the receiving state; or*
- 3)
 - a) *has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and*
 - b) *Can obtain employment in the receiving state or has a visible means of support.*

The intent of this rule, *as derived from its plain meaning*, is that while the “sending state” initially controls the decision to allow the offender to transfer under the Compact,, the receiving state has no discretion in whether or not to accept the case, *as long as the offender satisfies the criteria provided in this rule.*

Rule 3.101 (1) *requires that the offender must be in “substantial compliance with the terms of supervision in the sending state”* At the 2004 annual meeting in Atlanta October 27, 2004 the Interstate Commission for Adult Offender Supervision adopted the following definition of this term *“substantial compliance”*

Substantial compliance” means that an offender is sufficiently in compliance with the terms and conditions of his or her supervision so as not to result in initiation of revocation of supervision proceedings by the sending state.

Analysis and Conclusion

The intent of adding “substantial compliance” *to the criteria set forth in this rule* was to *prevent the transfer offenders who are not in compliance with the terms and conditions of their supervision in the sending state.* However, Wisconsin and other states *requesting the advisory opinion* present a valid argument when they emphasize *“pending charges in the receiving state are irrelevant to the transfer decision, when the issuing authority has taken no action...”*

The rejection of transfers of offenders on this basis is unjustifiably prohibiting offenders who are residents of the receiving states to which they wish to transfer from returning home and who in many cases have no resources in the sending state but are not allowed to transfer due



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to denial based on outstanding warrants. Many times these warrants are *for minor offenses such as* driving infractions *which* have not been resolved.

Accordingly, based on the above analysis and the plain meaning of the above referenced authorized rules of the Compact, if the sending state has taken no action on these warrants and has not specifically determined these warrants or pending charges to be a basis for revocation proceedings, then the transfer application should not be rejected only on this basis.