



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

Opinion Number: 9-2006
Dated: August 7, 2006

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

State Requesting: Minnesota

Description: An offender being in the receiving state prior to investigation as a valid reason for rejection.

Background & History

Pursuant to Commission Rule 6.101(c) the State of Minnesota has requested an Opinion regarding Commission 2.110. Minnesota states the following:

Minnesota is requesting a formal opinion regarding an offender being in the receiving state prior to the investigation being completed as a valid reason for rejection. Does it matter if the case is a mandatory case or not? Does the Compact allow for the receiving state to hold the investigation until the sending state returns the offender at which time the receiving state can start the investigation?

Commission Rule 2.110 States:

- (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.*
- (b) An offender who is not eligible for transfer under this Compact is not subject to these rules and remains subject to the laws and regulations of the state responsible for the offender's supervision.*

Rule 2.110 contains a mandatory requirement of compliance with the provisions and procedures of the compact and the rules as a condition of permitting an offender to relocate from a sending state to a receiving state. This prerequisite applies to mandatory transfers of offenders under supervision under Rules 3.101 and 3.101-1 as well as discretionary transfers of offenders under Rule 3.101-2. The rules governing compact transfers are set forth in Rules 3.102, 3.103, 3.104, 3.104-1, 3.105, 3.106, 3.107 3.108, 3.108-1, and 3.109. These rules provide the procedures which must be followed with regard to applications for transfer, transfer requests, investigations, acceptance of transfers, reporting instructions, expedited transfers and victim notification. Among these requirements are specific provisions such as Rule 3.103 (a) which prohibits a sending state from allowing a supervised offender to relocate to a receiving state without the receiving state's acceptance, with the exception of travel permits which may be granted but which are also subject to procedural requirements set forth in that rule. Such acceptances are premised on investigations which the receiving states are required to be given a reasonable opportunity to conduct prior to the offender being allowed to leave the sending state under the provisions of Rule 3.102(b), with the exception of travel permits



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under Rule 3.103(b). It is presumed in Rule 3.103 (a) that a sending state will not allow a compact offender to relocate to a receiving state and therefore this subsection is silent on the subject of the sending state retaking the offender if in violation this provision; however, when read together with subsection 3.103(b)(5)(B) it is clear that the intent of this rule is to require the sending state to initiate the retaking of an offender whose transfer request is rejected and who relocates in violation of these provisions by issuing a warrant or an order to return to the sending state.

Analysis and Conclusion

Both the language and intent of the above rules, including Rule 2.110 unequivocally require that the above referenced procedures set forth in the Rules must be followed in all transfers of eligible offenders and the failure to do so is a violation of the compact and the Rules. Unquestionably, states which allow eligible offenders to transfer prior to the receiving state having an opportunity to investigate are in violation of the Compact under Rule 3.102(b) and Rule 2.110. In such circumstances the receiving state can properly reject the request for transfer of such an offender, until returned to the sending state, due to the prior failure of the sending state to comply with the requirements of the compact and the rules as referenced above.