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ICAOS Advisory Opinion <b>Issued by:</b> <b>Executive Director: Harry Hageman</b> <b>Chief Legal Counsel: Richard L Masters</b>		
<b>State Requesting Opinion: East Region</b>	<b>Dated: December 17, 2009</b>	
<b>Description: Clarification of Rule 3.105- transfer request for offenders incarcerated at the time the request is submitted.</b>		

**Background & History:**

Pursuant to Commission Rule 6.101(c) the States of the East 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 issue:

**Issue:**

Whether a sending state may request that a receiving state investigate a request to transfer supervision under the compact prior to the offender’s release from incarceration when the offender is subject to a “split sentence” of jail or prison time and release to probation supervision, or must wait until the offender is released to supervision in order to make such a request.

**Applicable Rules:**


Rule 1.101 in relevant part provides:

“Offender” means an adult placed under, or made subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, and who is required to request transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision.

Rule 3.102 provides as follows:

Rule 3.102 Submission of transfer request to a receiving state

- (a) Subject to the exceptions in Rule 3.103 and 3.106, a sending state seeking to transfer supervision of an offender to another state shall submit a completed transfer request with

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all required information to the receiving state prior to allowing the offender to leave the sending state.

- (b) Subject to the exceptions in Rule 3.103 and 3.106, the sending state shall not allow the offender to travel to the receiving state until the receiving state has replied to the transfer request.


Rule 3.105 provides as follows:

Rule 3.105, Request for transfer of a paroling offender

- (a) A sending state shall submit a completed request for transfer of a paroling offender to a receiving state no earlier than 120 days prior to the offender’s planned prison release date.
- (b) A sending state shall notify a receiving state of the offender’s date of release from prison or if recommendation for parole of the offender has been withdrawn or denied
- (c) (1) A receiving state may withdraw its acceptance of the transfer request if the offender does not report to the receiving state by the fifth calendar day following the offender’s intended date of departure from the sending state.  
(2) A receiving state that withdraws its acceptance under Rule 3.105(c) (1) shall immediately notify the sending state.  
(3) Following withdrawal of the receiving state’s acceptance, a sending state must resubmit a request for transfer of supervision of a paroling offender in the same manner as required in Rule 3.105 (a).

**Analysis and Conclusion**

Questions which arise concerning the proper construction of statutes or administrative rules not only require recourse to the ‘plain meaning’ of the words used, but also require that the provisions of a particular statute or regulation be interpreted in harmony with other statutory or regulatory provisions governing the conduct in question. *“Plain meaning is examined by looking at the language and design of the statute as a whole.” See Lockhart v. Napolitano, 573 F. 3d*


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251 (6<sup>th</sup> Cir. 2009). Moreover such provisions must be interpreted consistent with the intent of the legislative body which adopted the provisions in question and “interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purposes are available.” See *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982).

Although the predecessor compact to the Interstate Compact for Adult Offender Supervision referred to both parolees and probationers, neither term appears in the Act by which the compact is now known and has been enacted by all fifty (50) states. It is also significant that neither the term ‘Probation’ nor ‘Parole’ is defined in either the compact statute or the ICAOS rules.

Instead both the provisions of the current compact and the ICAOS rules define the term ‘offender’ which definition subsumes within it both offenders who are released to the community on probation under the jurisdiction of courts as well as those who are released to the community on parole and who are required to request transfer of supervision under the provisions of the compact. Similarly, the text of the compact and rules, including those referred to in this opinion, generally do not distinguish between offenders on probation and those on parole.

While the provisions of Rule 3.105, on which the Commonwealth of Massachusetts purports to rely, refer to a ‘paroling’ offender and limit the time frame in advance of an offender’s release date within which a sending state may submit a completed request for transfer, nothing in the language of this rule or any other ICAOS rules prohibits a transfer request from being made for an offender who is released from incarceration and subsequently placed under probation supervision. Regardless of whether an offender is being released to parole supervision or probation supervision it is clear that the intent of the ICAOS rules, like the compact itself, is to promote public safety and offender rehabilitation. As recently determined in *Doe v. Pennsylvania Board of Probation and Parole*, 513 F.3d 95 (3<sup>rd</sup> Cir. 2008) “The parties to this Compact have set forth their intentions quite clearly: It is the purpose of this compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compacting states: ‘to provide the framework for the promotion of public safety and protection of the rights of victims through the control and regulation of the interstate movement

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*of offenders in the community; to provide for effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits, and obligations of the compact among the compacting states.’ ” Doe supra. @ p.106.*

The proffered interpretation by the Commonwealth of Massachusetts could inevitably lead to situations in which the delay in processing a sending state’s request for an investigation of a transfer of an offender serving a ‘split sentence’ until after the offender’s release places the public at risk because the offender will be released for a period which could potentially last for several months in the sending state where there is no housing, no support system and no employment. It would be an ‘absurd’ result to interpret this rule in a manner which endangers public safety rather than promoting it and is inimical to the offender’s rehabilitation.

**Accordingly, based on the foregoing analysis and consistent with the clear intent of the compact and the ICAOS rules as well as the language and design of the compact and the rules, a sending state may request that a receiving state investigate a request to transfer supervision under the compact prior to the offender’s release from incarceration when the offender is subject to a “split sentence” of jail or prison time and release to probation supervision.**