 <p><b>Interstate Commission for Adult Offender Supervision</b></p>	<p><b>Opinion Number</b>  1-2015</p>	<p><b>Page Number:</b>  1</p>
<p align="center"><b>ICAOS Advisory Opinion</b> Issued by:  Executive Director: Harry E. Hageman and Chief Legal Counsel: Richard L. Masters</p>		
<p><b>State Requesting Opinion:</b> North Carolina</p>	<p align="right"><b>Dated:</b> 2/12/2015</p>	
<p><b>Description:</b>  Whether an offender whose supervision is transferred under the Compact to the State of North Carolina and commits a violation of one or more of the terms and conditions of probation may be subjected to confinement for short periods in lieu of revocation of probation pursuant to a state statute applicable to offenders sentenced in North Carolina?</p>		

**Background & History:**

The State of North Carolina recently enacted a North Carolina statute, which provides for short term confinement of North Carolina offenders, who violate the terms and conditions of probation for a period of up to three (3) days, at a time, in lieu of revocation of probation. According to state officials, this program is also referred to as “Quick Dip”. Based upon the above facts and pursuant to Commission Rule 6.101(c), the State of North Carolina has requested an advisory opinion regarding the requirements of the Compact and ICAOS Rules on the following issue:

**Issue:**

**Whether an offender whose supervision is transferred under the Compact to the State of North Carolina and commits a violation of one or more of the terms and conditions of probation may be subjected to confinement for short periods in lieu of revocation of probation pursuant to a state statute applicable to offenders sentenced in North Carolina?**


**Applicable Rules:**

Rule 4.101 provides:

**“Rule 4.101 Manner and degree of supervision in receiving state**

A receiving state shall supervise an offender transferred under the interstate compact in a manner determined by the receiving state and consistent with the supervision of other similar offenders sentenced in the receiving state.”

Rule 4.103 (a) and (b) in relevant part provide:

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**“Rule 4.103 Special conditions**

- (a) At the time of acceptance or during the term of supervision, the compact administrator or supervising authority in the receiving state may impose a special condition on an offender transferred under the interstate compact if that special condition would have been imposed on the offender if sentence had been imposed in the receiving state.”
- (b) A receiving state shall notify a sending state that it intends to impose or has imposed a special condition on the offender, the nature of the special condition, and the purpose.”


Rule 4.109(a) and (b) in relevant part provide:

**“Rule 4.109 Violation Reports**

- (a) A receiving state shall notify a sending state of significant violations of conditions of supervision by an offender within 30 calendar days of discovery of the violation.
- (b) A violation report shall contain-
  - ...
    - (5) status and disposition, if any, of offense or infraction;
    - ...
      - (7) receiving state’s recommendation of actions sending state may take;

**Analysis and Conclusion:**


It is clear that ICAOS Rule 4.101 allows and in fact requires that the State of North Carolina “shall supervise an offender transferred under the interstate compact in a manner determined by the receiving state and consistent with the supervision of other similar offenders sentenced in the receiving state.”

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However, a consistent and harmonious interpretation and application of ICAOS rules in this situation also requires that the provisions of ICAOS Rule 4.103 (a) and (b) are considered and in the interest of fairness to both the offender and the sending state it seems reasonable to conclude that the imposition of this limited period of incarceration, in lieu of revocation of probation ('Quick Dip'), would 'qualify' as a 'special condition under Rule 4.103, which would require the State of North Carolina to notify the sending state of such condition of supervision 'at the time of acceptance or during the term of supervision' as required under this rule.

It might also be argued that ICAOS Rule 4.109 suggests that North Carolina might need to both report any significant violation of conditions of supervision by an offender within 30 calendar days, the provisions of sub-sections (5) and (7) of this rule appear to recognize that the receiving state already has the authority to make a 'disposition' of any offense and infraction as well as to make a 'recommendation' of remedial action. In addition, if the limited period of incarceration is imposed as a "special condition" under ICAOS Rule 4.103, the sending state (and the offender) would already be aware of the possibility of imposition of such a sanction and would not need to secure 'advance permission' to impose it. However, this may also be an area in which ICAOS rules should be examined to determine if further clarification is deemed necessary concerning the application of Rule 4.109 in this situation.

As in other cases of statutory construction, the provisions of the Compact statute and rules should be interpreted in harmony with other sections of the statute, or in this case the above referenced ICAOS rules and "plain meaning is examined by looking at the language and design of the statute as a whole." See, *Lockhart v. Napolitano*, 573 F.3d 251 (6th Cir. 2009). Consistent with such a "harmonious" interpretation, a literal reading of Rule 4.101 allows the imposition of the limited periods of incarceration under the 'Quick Dip' program to be imposed on offender transferred to North Carolina under the Compact consistent with the supervision of other similar offenders sentenced there. When considered in the context of ICAOS rules regarding supervision in the receiving state, the imposition of the 'Quick Dip' procedures appear to qualify as a 'special condition' under ICAOS 4.103 of which both the sending state and the offender should be notified at the time of transfer of supervision. Upon violation of the terms and conditions of probation which might otherwise result in revocation, notice may also be required under

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Rule 4.109, although once imposed as a ‘special condition’ under ICAOS Rule 4.103 both the offender and sending state would already have been aware of the manner in which such a violation may be disposed.

**Summary:**

Based upon the terms of the Compact, the above referenced rules and the legal authorities cited herein, an offender whose supervision is transferred under the Compact to the State of North Carolina and commits a violation of one or more of the terms and conditions of probation may be subjected to confinement for short periods in lieu of revocation of probation pursuant to a state statute applicable to offenders sentenced in North Carolina. ICAOS Rules contemplate that the receiving state is required to “supervise an offender transferred under the Interstate Compact in a manner determined by the receiving state and consistent with the supervision of other similar offenders sentenced in the receiving state.” However, in the interest of fairness to both the offender and the sending state, it seems reasonable to conclude that the imposition of this limited period of incarceration, in lieu of revocation of probation (‘Quick Dip’), would ‘qualify’ as a ‘special condition under Rule 4.103, which would require the State of North Carolina to notify the sending state of such condition of supervision ‘at the time of acceptance or during the term of supervision’ as required under this rule.