	<b>Interstate Commission for Adult Offender Supervision</b>	<b>Opinion Number</b> 2-2010	<b>Page Number:</b> 1
ICAOS Advisory Opinion <b>Issued by:</b>  <b>Harry Hageman, Executive Director</b> <b>Richard L Masters, Chief Legal Counsel</b>			
<b>State Requesting Opinion:</b>  Arizona		<b>Dated:</b>  July 15, 2010	
<b>Description:</b>  <b>Whether ICAOS Rule 4.112 permits a sending state to advise a receiving state to close interest in a supervision case upon modification of the sentencing order so that the status of the offender no longer qualifies as “supervision” under ICAOS Rule 1.101 but the sending state does not terminate the case.</b>			

**Background & History:**

Pursuant to Commission Rule 6.101(c) the State of Arizona has requested an advisory opinion regarding the requirements of the Compact and ICAOS Rules on the following issue:

**Issue:**

Whether ICAOS Rule 4.112 (a) (1) permits a sending state to properly direct a receiving state to close interest in a supervision case upon modification of the sentencing order in the sending state so that the status of the transferred offender no longer qualifies as “supervision” of an offender as defined under ICAOS Rule 1.101 the compact but the sending state does not terminate the case.


**Applicable Rules:**

Rule 4.112 provides:

**“Rule 4.112 Closing of supervision by the receiving state”**

(a) The receiving state may close its supervision of an offender and cease supervision upon:

- (1) The date of discharge indicated for the offender at the time of application for supervision unless informed of an earlier or later date by the sending state;
- (2) Notification to the sending state of the absconding of the offender from

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supervision in the receiving state;


- (3) Notification to the sending state that the offender has been sentenced to incarceration for 180 days or longer, including judgment and sentencing documents and information about the offender’s location;
- (4) Notification of death; or
- (5) Return to the sending state.

(b) A receiving state shall not terminate its supervision of an offender while the sending state is in the process of retaking the offender under Rule 5.101.

(c) At the time a receiving state closes supervision, a case closure notice shall be provided to the sending state which shall include the last known address and employment.

**Analysis and Conclusion:**


The literal text of Rule 4.112 provides that a receiving state may close its supervision of a compact offender only upon the occurrence of at least one (1) of five (5) events set forth in the regulation. These being: 1) discharge of the offender by the sending state; 2) absconding of the offender from supervision; 3) sentencing of the offender to incarceration for at least 180 days; 4) death of the offender; or 5) return of the offender to the sending state.

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Arizona’s question implies that a sending state has the authority to modify its sentencing order to “unsupervised” status but not to terminate supervision. However, this result is not warranted because of the legal effect of the sending state’s action. If the sentencing order is modified by the sending state so that the offender’s status no longer qualifies as “supervision” defined under ICAOS Rule 1.101, it would be unreasonable not to conclude that such an order is tantamount to a ‘discharge’ of the offender by the sending state. As observed in ICAOS Advisory Opinion 11-2006, the discharge of the offender from supervision as indicated at the time of the original application or as subsequently determined by the sending state under ICAOS Rule 4.112 (a)(1) will result in the offender no longer being subject to the compact.

Once ‘discharged’ under Rule 4.112 (a)(1) there is no basis for the sending state to insist that supervision has not been terminated because by definition, if the offender’s status is such that the offender is no longer under “supervision,” no further jurisdiction exists to supervise the offender under the compact. While ICAOS Rule 4.101 clearly vests authority in the receiving state to determine the manner and degree of supervision in the receiving state, it is equally clear that ICAOS Rule 4.102 provides that the sending state has the sole discretion to determine the duration of the period of ‘supervision’ as that term is defined under the compact. If a modification of the sentencing order results in the circumstance that the offender is no longer classified as being under supervision in the sending state, this qualifies as a ‘discharge’ of the offender from supervision which under the express terms of ICAOS Rule 4.112 (a)(1) requires the receiving state to close and cease its supervision.

While the Commission has the prerogative to amend this or any related rule if it decides to do so, as currently written, under Rule 4.112 (a)(1) once a modification of the sentencing order has occurred so that the offender is no longer considered to be under

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‘supervision’ in the sending state, the sending state has no further basis to insist that the receiving state continue to supervise the offender or keep the case open. As has been recognized in case law and ICAOS advisory opinions, “Courts have generally recognized that in supervising out-of-state offenders the receiving state is acting on behalf of and as an agent of the sending state” *See State v. Hill, 334 N.W.2d 746 (Iowa Supreme Court 1983); also State ex rel. Ohio Adult Parole Authority v. Coniglio, 610 N.E.2d 1196, 1198 (Ohio Ct. App. 1993)*(‘For purposes of determining appellee’s status in the present case, we believe that the Ohio authorities should be considered as agents of Pennsylvania, the sending state. As such the Ohio authorities are bound by the decisions of Pennsylvania . . .’).

Whether the sending state refers to its determination to modify the terms of the sentence as a discharge or not, by operation of law, once supervision has ceased in the sending state there is no further basis upon which the receiving state can continue to act as an agent for the sending state to perform supervision on its behalf when no such authority over the offender continues to exist in the sending state. This is consistent with the previous position taken in *Advisory Opinion 11-2006* that discharge of the offender under Rule 4.112 (a)(1) is determinative of eligibility for supervision under the compact.