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<p align="center"> ICAOS Advisory Opinion Issued by: Executive Director-Don Blackburn Chief Legal Counsel: Richard L Masters </p>			
State Requesting Opinion Maryland		Dated: March 30, 2005	
Description Applicability of the ICAOS, and its rules, requested by Circuit Judge John W. Debelius, III			

Background:

According to the Opinion request this case concerns an offender who, pursuant to a May 22, 2003 plea agreement with the state of Maryland, pled guilty to two felonies (First Degree Assault and Robbery with a Dangerous and Deadly Weapon) and a misdemeanor (Fourth Degree Sex Offense). At the time of the offenses, the defendant was 15 ½ years old, but pled as an adult in the proceedings before the Court. Prior to entering into the plea agreement with the State, the defendant, with the State’s acquiescence, enrolled in a residential therapeutic treatment facility for juveniles in Tennessee. Under the terms of the plea agreement reached with the State, the defendant was to be permitted to complete the program in Tennessee and thereafter attend a follow-up therapeutic boarding school as directed by Dr. Lance Clawson, a privately employed, Board Certified child and adolescent psychiatrist, in consultation with the State.

On May 28, 2003, pursuant to the terms of the plea agreement, the Court accepted the defendant’s guilty plea and imposed a sentence of 15 years (suspended in its entirety) and placed the defendant on five years probation, imposing all standard conditions of probation and requiring the defendant to complete the therapeutic program in Tennessee and abide by his psychiatrist’s directives regarding follow-up treatment at another therapeutic boarding school. At the time of sentencing, the Court directed that the term of the defendant’s probation be supervised. The defendant returned to Tennessee on May 28, 2003, the same day that the Court imposed its sentence.

Maryland’s Division of Parole and Probation subsequently was advised by the State of Tennessee that it had rejected the transfer of the supervision of the defendant’s probation, prompting the Court to convene further proceedings. In an effort to fulfill the terms of the plea agreement, permit the defendant to complete the program in which he was enrolled and receive follow-up treatment as directed by Dr. Clawson, the Court drafted a revised probation order on June 19, 2003, which would have placed the defendant on unsupervised probation. (This revised order was never filed and, by order dated July 30, 2003 (see below) was deemed a nullity and therefore not binding on the parties). In so doing, it was the Court’s intention to remove this case from the purview of the ICAOS. The Court, however, imposed certain special conditions in connection with its revised probation order, including periodic reports from the residential treatment facility to

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Maryland’s Division of Parole and Probation and notification to the Division should the defendant leave the premises without authorization.

On June 20, 2003, the Court was advised by the Office of Maryland’s Attorney General that the conditions set forth in the revised probation order may be construed to constitute “supervision” under the ICAOS. In response to these concerns, on July 30, 2003, the Court entered an Interim Order modifying its Probation Order to delete any and all reporting requirements to the Maryland Division of Parole and Probation and reiterating the Court’s intention that the period of probation be unsupervised. The Interim Order was submitted to both the Tennessee and Maryland authorities for review. In a letter to the Court dated August 14, 2003, the Tennessee Interstate Compact Administrator confirmed that nothing in the Interim Order created a supervisory condition and therefore the provisions of the ICAOS were not implicated. In a letter to the Court dated September 18, 2003, counsel responsible for ICAOS issues in Maryland concurred with Tennessee’s opinion. Accordingly, on October 2, 2003, the Court entered a Final Probation Order consistent with the Interim Order that specifically provided for unsupervised probation and authorized the defendant’s continued participation in the residential treatment program in Tennessee to be followed by residence in a “therapeutic boarding school upon the direction of Dr. Lance Clawson”

From November 2002 to February 2004, the defendant was enrolled in the Tennessee residential treatment program. When Dr. Clawson determined that Andrew had “attained maximum clinical benefit from the program” in Tennessee he directed that the defendant attend a therapeutic boarding school in Running Springs, California. In February 2004, pursuant to the authority previously provided by the Court in its Final Probation Order, the defendant transferred to the California facility. The defendant remained in California until December 7, 2004, when he took medical leave of absence and returned to Maryland for treatment of a gastrointestinal tract ailment.

Dr. Clawson has now recommended that the defendant enroll in a residential treatment facility in Florida that will better be able to address his medical issues and continue his therapy and education. Because the new rules of the ICAOS became effective after the date that the Court entered its Final Probation Order, you have raised the following questions on which the Court seeks guidance:

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Issues:

1. Are the ICAOS rules, which became effective August 1, 2004, applicable to the Final Probation Order entered by the Court on October 2, 2003?
2. If the answer to the first issue is “no,” and the Court allows the defendant, now present in Maryland, to leave the State in order to enroll in the Florida program, would such action constitute an order that would trigger the new Rules of the ICAOS?
3. If the answer to either the first or second issues is “yes,” under the new rules, is the defendant’s probation supervised within the meaning of ICAOS?

Analysis and Opinion

With respect to the first question, pursuant to the provisions of the Interstate Compact for Adult Offender Supervision (ICAOS) provides that the administrative rules of the previous compact which ICAOS replaces, were adopted as interim rules for the administration of the new compact for a period of twelve (12) months after the first meeting of the Interstate Commission for Adult Offender Supervision. These so-called “transition” rules remained in effect until superseded by the new rules promulgated by the Commission with an effective date of August 1, 2004. As a result, the prior rules were controlling at the time of the Final Probation Order entered by the Court on October 2, 2003.

With respect to the second question, if the Court enters an Order allowing the defendant, who is at this time residing in the State of Maryland to leave the state, this would trigger the new Rules of the ICAOS if he meets the criteria under Rule 2.105 and Rule 3.101(a) or (c). Under both the provisions of the Compact and the new rules of the compact, an Offender is defined as “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.” Under this definition, there are two

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components of supervision the first being that it is imposed on an adult “. . . as the result of the commission of a criminal offense” and secondly, that the adult is “. . . released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.”

The rules of the compact define “supervision” to mean “the authority or oversight exercised by supervising authorities of a sending or receiving state over an offender for a period of time determined by a court or releasing authority, during which the offender is required to report to or be monitored by supervising authorities, and includes any condition, qualification, special condition or requirement imposed on the offender at the time of the offender’s release to the community or during the period of supervision in the community.”

Under these rules, an order authorizing an offender convicted of two felonies involving assault with a deadly weapon and a misdemeanor sex offense to transfer to another state would clearly trigger the possible application of the current compact rules because of the types of offenses and the duration of supervision which are covered under Rules 2.105 and 3.101(a).

With respect to the third question as to whether the defendant’s probation is considered “supervised” under the compact, reference is made to the current definition of “offender” as set forth above which clearly provides that an offender supervised pursuant to the terms of the Compact and its rules may include “an adult placed under supervision by a court.” Under the definition of “supervision” contained in Rule 1.101 (bb), it is equally clear that supervision, as defined under the current rules of the compact has two distinct criteria both of which must be satisfied in order for such a relationship (‘supervision’) to exist under the compact. These are: 1) “authority or oversight is exercised by a supervising authority, and 2) such exercise of authority includes “. . . a condition, qualification, special condition or requirement which is imposed on the offender at the time of release to the community or during the period of supervision in the community.”

If a subsequent order is entered by the court concerning this offender imposing a condition or requirement such as successful completion of a treatment program and

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while under treatment is subject to limitations or restrictions on the offender’s location or activities the violation of which would result in revocation of probation; and the court order requires that the facility in which the offender is placed monitor these restrictions and report violations to the court, this would constitute “supervision” as that term is currently defined by the rules of the ICAOS.