 Interstate Commission for Adult Offender Supervision	Opinion Number 3-2008	Page Number: 1
ICAOS Advisory Opinion Issued by: Executive Director: Harry E. Hageman Chief Legal Counsel: Richard L. Masters		
State Requesting Opinion Massachusetts	Dated: 11/19/2008	
Description Guidance concerning out-of-state travel for sex offenders		

Pursuant to Commission Rule 6.101(c) the Commonwealth of Massachusetts has requested an advisory opinion regarding out of state travel for sex offenders. In its request Massachusetts states as follows:


Background:

The Massachusetts Probation Service (‘MPS’) prohibits sex offenders from traveling out-of-state while under probation supervision. An exception to this prohibition may occur where the probationer seeks, and is granted, permission for such travel from the sentencing court.

A sex offender whose probation supervision was transferred to Massachusetts pursuant to the Interstate Compact for Adult Offender Supervision (‘ICAOS’) sought permission from the MPS interstate compact office to travel out-of-state for work purposes. The request was denied on the basis that sex offenders under probation supervision in Massachusetts are prohibited from out-of-state travel. The offender’s attorney then appeared before the sentencing court in the sending state to request permission for the offender to travel. The court thereafter authorized the offender to travel outside of Massachusetts for work purposes.

MPS believes that under ICAOS, once an offender’s supervision is transferred to a receiving state, the receiving state’s supervision authority has sole responsibility for making decisions as to an offender’s supervision, including out-of-state travel, and that the sentencing court in the sending state has no authority to grant an offender permission to travel in contravention of a decision of the receiving state’s supervision authority.

Based upon this factual predicate, the Commonwealth of Massachusetts seeks an advisory opinion of the Commission on the following issues:

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Issue #1:

Whether a receiving state’s compact administrator may prohibit an offender, whose supervision was transferred to the receiving state pursuant to ICAOS, from traveling outside of the receiving state while under supervision in the receiving state?

Issue #2:

Whether the sentencing court in the sending state retains the authority, in light of ICAOS and its attendant rules and regulations, to authorize an offender’s out-of-state travel for work purposes once his or her supervision has been transferred to another state pursuant to ICAOS?

Applicable Regulations


Among the rules implicated by this request are:

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.

Analysis and Conclusion

With regard to the first issue, if the receiving state prohibits its own sex offenders from traveling out of state while under probation supervision the plain language of the foregoing provisions of ICAOS Rule 4.101 contemplate that compact offenders supervised under the compact may be supervised in the same manner. However, in its request for an advisory opinion the MPS concedes that an exception to this prohibition arises if a probationer who is sentenced in Massachusetts seeks and is granted permission for such travel by the sentencing court. Since ICAOS Rule 4.101 requires that a receiving state shall supervise a compact offender “**consistent with the supervision of similar offenders sentenced in the receiving state**” then compact

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offenders should be subject to the same exception as offenders sentenced in the state. *See also ICAOS Advisory Opinion 5-2006.*

With respect to issue # 2 and contrary to the position of MPS in this regard, although the provisions of the ICAOS rules provide that the manner and degree of supervision of compact offenders is determined by the receiving state, the sentencing court in the sending state does not surrender its' jurisdiction over an offender whose supervision is transferred to another state. For example ICAOS Rule 4.102 provides that it is the sending state which determines the duration of the supervision. Similarly, Rule 5.101 vests sole discretion in the sending state to retake an offender at any time, subject to the exceptions noted in that rule. As pointed out in the *ICAOS Bench Book for Judges and Court Personnel* at pp.84-85 "In supervising out-of-state offenders, authorities in a receiving state are not acting exclusively as authorities of that state under the domestic law of that state, . . . and to a certain degree are controlled by the lawful decisions of sending state officials." *See e.g., State ex rel. Ohio Adult Parole Authority v. Coniglio*, 610 N.E.2d 1196 (Ohio Ct. App., 1993); *Crady v. Cranfill*, 371 S.W.2d 640 (Ky. Ct. App., 1963)(detention of offenders proper as only courts in the sending state can determine the status of their jurisdiction over the offender). Accordingly, the sending state court continues to exercise some authority over a compact offender for the duration of the period of supervision.

Summary

Based on the above analysis and legal authority, to the extent the Commonwealth of Massachusetts, through the MPS, recognizes an exception to its policy prohibiting out of state travel for sex offenders when such an offender seeks and is granted permission for such travel by the sentencing court in Massachusetts, then the same exception should apply to such an offender transferred to Massachusetts pursuant to ICAOS *vis-à-vis* the sentencing court in the sending state.