

	<b>Interstate Commission for Adult Offender Supervision</b>	<b>Opinion Number</b> ICAOS 4-2004	<b>Page Number:</b> 1
<b>ICAOS Advisory Opinion</b> <b>Issued by:</b> <b>Executive Director-Don Blackburn</b> <b>Chief Legal Counsel: Richard L Masters</b>			
<b>State Requesting Opinion</b> Florida		<b>Dated:</b> <b>June 30, 2004</b>	
<b>Description</b> Request for Opinion as to “deferred sentences”			

### **Background**

Florida has asked for clarification as to the eligibility for transfer of supervision of an offender subject to “deferred sentences” pursuant to Section 2.106 of the amended rule adopted by the Interstate Commission for Adult Offender Supervision at its special meeting for the Commission on March 12, 2004. This rule provides in relevant part as follows:

Offenders subject to deferred sentences are eligible for transfer of supervision under the same eligibility requirements, terms, and conditions applicable to all other offenders under this Compact.

### **Discussion**

This rule must be considered in the context of the requirements of the Interstate Compact for Adult Offender Supervision and other related rules. Article II of the Compact and Section 1.101 of the rules of the ICAOS both define the term “Offender” as follows:

“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 terms and conditions of supervision.

The term “Supervision” is defined in Section 1.101 of the ICAOS Rules and provides as follows:

“Supervision” means 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

	<b>Interstate Commission for Adult Offender Supervision</b>	<b>Opinion Number</b> ICAOS 4-2004	<b>Page Number:</b> 2
<b>ICAOS Advisory Opinion</b> <b>Issued by:</b> <b>Executive Director-Don Blackburn</b> <b>Chief Legal Counsel: Richard L Masters</b>			
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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.

While neither definition makes reference to a specific type of adjudication or plea, the specific question raised here requires an analysis of what the offender and the court have actually done in a case where a “deferred sentence” has been imposed. Since the compact requires that one must be an “Offender” in order to be subject to “supervision,” it logically follows that there must be a lawful finding by a court as evidenced by an entry of a conviction of a criminal offense, the entry of a plea of guilt, or the entry of a “no contest” plea to the charge(s) by the offender.

**Conclusion**

In the case of a “deferred sentence” under rule 2.106, the rule would apply if the court has lawfully entered a conviction on its records even if it has suspended the imposition of a final sentence and has subjected the offender to a program of conditional release. The rule would also apply where the defendant has entered a plea of guilt or no contest to the charge(s) and the court has accepted the plea but suspended entry of a final judgment of conviction in lieu of placing the offender in a program of conditional release, the successful completion of which may result in the sealing or expungement of any criminal record. Finally, the rule would apply where the court has entered a conviction on the record and sentenced the offender but has suspended execution of the sentence in lieu of a program of conditional release.

The operative consideration for purposes of rule 2.106 is whether the court has, as a condition precedent, made some finding that the offender has indeed committed the offense charged. This finding, by a court of competent jurisdiction, whether technically classified as a “conviction” under the terms of an individual state’s law, makes the person an offender for purposes of the Compact. The offender is no longer in a pretrial,

	<b>Interstate Commission for Adult Offender Supervision</b>	<b>Opinion Number</b>  <b>ICAOS 4-2004</b>	<b>Page Number:</b>  <b>3</b>
<b>ICAOS Advisory Opinion</b> <b>Issued by:</b> <b>Executive Director-Don Blackburn</b> <b>Chief Legal Counsel: Richard L Masters</b>			
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presumed innocent status, but has found to have committed the charged offense notwithstanding the decision of the court to withhold punitive sentencing in favor of an alternative program of corrections such as deferment, probation in lieu of sentencing, suspended imposition of sentence or suspended execution of sentence.

It must be emphasized, given the overall purposes of the compact and the status of the ICAOS as federal law that an individual state's statutory scheme that can vary remarkably from state to state is of limited benefit in determining whether an offender is subject to the Compact. Individual states can use terms remarkably different from other states to describe what the same legal action is, in essence. In determining the eligibility of an offender and the application of the ICAOS, one must look not at the legal definitions but rather the legal action taken by a court of competent jurisdiction or paroling authorities. To find otherwise would lead to disruptions in the smooth movement of offenders, the equitable application of the ICAOS to the states, and the uniform application of the rules.