	<b>Interstate Commission for Adult Offender Supervision</b>	<b>Opinion Number</b>  ICAOS 6-2005	<b>Page Number:</b>  1
<p style="text-align: center;"><b>ICAOS Advisory Opinion</b>  <b>Issued by:</b>  <b>Executive Director-Don Blackburn</b>  <b>Chief Legal Counsel: Richard L Masters</b></p>			
<b>State Requesting Opinion:</b> Washington		<b>Dated:</b> <b>May 27, 2005</b>	
<b>Description:</b> Request for Opinion as to Washington's "deferred prosecution" statute			

### **Background**


Pursuant to Rule 6.101 the state of Washington has requested an advisory opinion as to whether or not offenders subject to the state's "deferred prosecution" statute as described in Chapter 10.05.020 et. seq. RCW are subject to the Interstate Compact for Adult Offender Supervision ("Compact") and are, therefore, eligible for transfer of supervision under Rule 2.106. In its request for opinion, Washington points out that under this state statute "deferred prosecution" only applies to misdemeanors.

The statute in question provides a procedure by which a person alleges under oath in a petition for deferred prosecution that the wrongful conduct charged is the result of drug or alcohol addiction or mental problems for which treatment is needed and that without treatment recurrence of the wrongful conduct is likely. If determined to be eligible for deferred prosecution based on these standards, the petitioner stipulates to the admissibility of the facts in the police report and waives constitutionally guaranteed rights to a jury trial, to testify and to confront accusers and present exculpatory evidence. The court sends the offender to treatment and remands the case from its regular docket for a period of up to ten years. If the petitioner violates the treatment plan conditions, the court conducts a hearing to determine whether the offender should be removed from deferred prosecution and if removal is warranted, simply enters judgment based on the facts previously stipulated in the petition. As the result of the prior stipulation and waivers, Washington indicates that the proceeding is analogous to a guilty plea in which the only remaining step is sentencing by the court.

### **Discussion**

Rule 2.106 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."

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This rule must be construed in the context of the Compact's requirements and other related rules. "Offender" is defined by both the Compact and Rule 1.101 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, and who is required to request transfer of supervision under the provisions of the 'Compact.'*"

The term '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 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.*"

As we stated in Advisory Opinion 4-2004, "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." In that same opinion we previously stated that Rule 2.106 would apply to a situation in which ". . . 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."

### **Conclusion**

Based on the statutory provisions described in Chapter 10.05.020 et. seq., RCW, it appears that Rule 2.106 of the Compact would apply to persons released under its terms. The operative consideration here is that the transaction which occurs under this statute, although labeled as a "deferred prosecution" is the equivalent of a "deferred sentence." The offender is required as a condition of participation in the "deferred prosecution" program to stipulate to the admissibility of the facts charged against him or her in the

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police report and is required to execute waivers of the right to a jury trial, the right to testify and the right to present exculpatory evidence to refute the charges by the state. If the offender violates the terms of the deferred prosecution program, the proceedings by the court are the same as if a plea of guilt had been entered; all that appears left is for the court to impose sentence.

As we have previously noted in other advisory opinions, individual states' statutory schemes can vary remarkably across the nation. In determining that Rule 2.106 applies here, we are considering the action actually taken by the offender and the court rather than the label used by the legislature. Given these facts, the overall purposes of the Compact, its status as federal law and the previous advisory opinion on this subject, we find little to distinguish a "deferred prosecution," under the Washington statutory scheme, from a "deferred sentence," a practice we have previously found covered by the Compact. To find otherwise would lead to disruptions in the movement of offenders and the uniform application of the provisions of the Compact and the rules to the states.