Interstate Commission for Adult Offender Supervision

Ensuring Public Safety for the 21st Century

ICAOS Advisory Opinions

Interpretation of Compact Rules

Years:
2004-2019

Any state may submit an informal written request to the Executive Director for assistance in interpreting the rules of this compact. The Executive Director may seek the assistance of legal counsel, the Executive Committee, or both, in interpreting the rules. The Executive Committee may authorize its standing committees to assist in interpreting the rules. Interpretations of the rules shall be issued in writing by the Executive Director or the Executive Committee and shall be circulated to all of the states.
/ Advisory Opinion Policy

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 4-2004
Issued: 2004-06-30

Requested by: Florida
At Issue: 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 March 12, 2004.

Advisory Opinion 4-2004

Issued by: Don Blackburn, Executive Director and Richard L. Masters, Legal Counsel

Background

Florida has asked for clarification as to the eligibility for transfer of supervision of an offender subject to "deferred sentences" pursuant to Rule 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.*

Applicable Rules and Statutes

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 Rule 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 Rule 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 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.

Analysis and 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, 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.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 7-2004
Issued: 2004-11-01

Requested by: Wisconsin
At Issue: May a state reject a transfer request for a supervised individual, who is a resident of the receiving state and has verified employment, when there are warrants or pending charges in the receiving state?

Advisory Opinion 7-2004

Issued by: Don Blackburn, Executive Director and Richard L. Masters, Legal Counsel

Background

Pennsylvania, Minnesota and several other states have asked for a ruling by the national office to establish consistency in the application of this process.

> *"Wisconsin states that in one case, the supervised individual was an inmate awaiting release from prison. The transfer request was denied when it was discovered that there were three municipal warrants for the individual in the receiving state. The rejection included the statement that the case would not be accepted until all charges were resolved.*
>
> *In the second case, reporting instructions were denied due to an outstanding warrant in the receiving state. The supervised individual was allowed to travel to the receiving state to answer the charge against him. The court released the supervised individual with orders that he not leave the state. The charge is still pending. The receiving state rejected his transfer request and has demanded that he be order back to Wisconsin. The receiving state has said he will not be accepted if he has a pending charge. "*
>
> *Wisconsin maintains that the existence of warrants or pending charges in the receiving state is irrelevant to the transfer decision, when the issuing authority has taken no action to enforce the warrant and/or the supervised individual has been released pending final disposition. If the supervised individual is not in custody, the individual must still be supervised. And, if eligible for transfer under 3.101(a), then the receiving state must accept supervision… To permit this is to allow a state to effect a "banishment order" by simply issuing a warrant, but refusing to have it enforced."*

Applicable Rules

Rule 1.101: Definitions:

> *"Substantial compliance" means that a supervised individual is sufficiently in compliance with the terms and conditions of his or her supervision so as not to result in initiation of revocation of supervision proceedings by the sending state.*

Rule 3.101: Mandatory Transfer of Supervision:

At the discretion of the sending state, a supervised individual shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the supervised individual:

(a) has more than 90 calendar days or an indefinite period of supervision remaining at the time the sending state transmits the transfer request; and
(b) has a valid plan of supervision; and
(c) is in substantial compliance with the terms of supervision in the sending state; and
(d) is a resident of the receiving state; or
(e)

1. *has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and*
2. *can obtain employment in the receiving state or has means of support.*

The intent of this rule, as derived from its plain meaning, is that while the "sending state" initially controls the decision to allow the supervised individual to transfer under the Compact, the receiving state has no discretion in whether or not to accept the case, as long as the individual satisfies the criteria provided in this rule.

Analysis

The intent of adding "substantial compliance" to the criteria set forth in this rule was to prevent the transfer of supervised individuals who are not in compliance with the terms and conditions of their supervision in the sending state. However, Wisconsin and other states requesting the advisory opinion present a valid argument when they emphasize "*pending charges in the receiving state are irrelevant to the transfer decision, when the issuing authority has taken no action…*"

The rejection of transfers of supervised individuals on this basis is unjustifiably prohibiting individuals who are residents of the receiving states to which they wish to transfer from returning home and who in many cases have no resources in the sending state but are not allowed to transfer due to denial based on outstanding warrants. Many times these warrants are for minor offenses such as driving infractions which have not been resolved.

Conclusion

Accordingly, based on the above analysis and the plain meaning of the above referenced authorized rules of the Compact, if the sending state has taken no action on these warrants and has not specifically determined these warrants or pending charges to be a basis for revocation proceedings, then the transfer application should not be rejected only on this basis.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 9-2004
Issued: 2004-12-02
Revised: 2026-02-04

Requested by: New Jersey
At Issue: New Jersey has requested clarification under ICAOS Rule 6.101 regarding whether individuals convicted of certain sexual offenses and sentenced under the Violent Predator Incapacitation Act of 1994, N.J.S.A. 2C:43-6.4—known as Community Supervision for Life (CSL)—are eligible for transfer of supervision under the Compact. Specifically, the question presented concerns the interpretation and applicability of ICAOS Rules 1.101 (Supervised Individual), 1.101 (Supervision), 3.101, and 5.103, and whether New Jersey possesses sufficient authority to retake or prosecute CSL offenders who violate conditions while under supervision in a receiving state. This request is prompted by disputes with the New York, which has declined to accept CSL transfers claiming that New Jersey lacks the legal ability to "retake" violators under the Compact.

Advisory Opinion 9-2004

Issued by: Don Blackburn, Executive Director and Richard L. Masters, Legal Counsel

Background:

Under N.J.S.A. 2C:43-6.4, individuals sentenced to CSL are released into the community under conditions set by the New Jersey State Parole Board. A violation of CSL conditions constitutes a fourth-degree criminal offense. The Parole Board may file a criminal complaint and county prosecutors are authorized to pursue prosecution. Additionally, the New Jersey Division of Law has advised that violations occurring outside its territorial borders still constitute violations of New Jersey law and may be fully prosecuted upon the individual's return. New Jersey asserts that CSL offenders are Compact eligible and that if a violation occurs while supervised in a receiving state, that state may close supervision and direct the individual to return to New Jersey, where prosecution would then be initiated under state law.

Applicable Rules

Rule 1.101 Definitions:

> *'Supervised Individual' means an "offender" defined by Article II of the Interstate Compact for Adult Offender Supervision 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 Compact.*
>
> *'Supervision' means the oversight exercised by authorities of a sending or receiving state over a supervised individual for a period of time determined by a court or releasing authority, during which time the supervised individual is required to report to or be monitored by supervising authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the supervised individual at the time of release to the community or during the period of supervision in the community.*

Rule 3.101 Mandatory Transfer of Supervision:

At the discretion of the sending state, a supervised individual shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the supervised individual:
(a) has more than 90 calendar days or an indefinite period of supervision remaining at the time the sending state transmits the transfer request; and
(b) has a valid plan of supervision; and
(c) is in substantial compliance with the terms of supervision in the sending state; and
(d) is a resident of the receiving state; or

(e)

1. *has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and*
2. *can obtain employment in the receiving state or has means of support.*

Rule 5.103 Supervised Individual Behavior Requiring Retaking:

(a) Upon a request by the receiving state and documentation that the supervised individual's behavior requires retaking, a sending state shall issue a warrant to retake or order the return of the individual from the receiving state or a subsequent receiving state within 15 business days of the receipt of the violation report.

Analysis

The Compact applies to any individual under community supervision as the result of a criminal conviction, plea of guilt, or plea of no contest, whether the supervision is imposed by a court, parole board, or other releasing authority. See Rule 1.101 (defining "Supervised Individual"). Its authority extends to those released to the community under lawful conditions of supervision, regardless of the specific terminology used by a state's statutes.

Under New Jersey's CSL statute, supervised individuals:

1. Have been convicted of qualifying offenses;
2. Are under ongoing supervision by the New Jersey State Parole Board; and
3. Are subject to continuing conditions and potential criminal penalties for violations.

These criteria satisfy the Compact's definitions of supervised individual and supervision. Therefore, CSL individuals are covered under ICAOS and may seek transfer when other eligibility criteria in Rule 3.101 are met.

As for retaking, Rule 5.103 reinforces that sending states must act promptly when behavior requires retaking or when a return is ordered. New Jersey's statutory structure, treating violations of CSL conditions as new criminal offenses subject to prosecution, does not negate its responsibility under ICAOS to issue a warrant or order a return consistent with the rule. Retaking encompasses both physical apprehension and formal return by directive; thus, New York's concern that New Jersey lacks authority to "retake" is unfounded.

Conclusion

Based on ICAOS definitions, rules, and statutory framework:

1. Individuals sentenced under New Jersey's "Community Supervision for Life" statute meet the

definition of supervised individuals under ICAOS.
2. They are eligible for transfer under Rule 3.101 if other criteria (e.g., compliance, residency, and supervision duration) are satisfied.
3. Rule 5.103 provides a clear mechanism for return or retaking when violations occur, ensuring that New Jersey remains compliant with Compact obligations.
4. The concerns raised by New York regarding New Jersey's retaking authority are addressed by the Compact's mandatory timelines and procedures.

Accordingly, CSL cases fall within the scope of the ICAOS, and transfers may be accepted and managed under its provisions.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: MA-2004
Issued: 2004-08-11

Requested by: Rhode Island,Massachusetts
At Issue: Consider adoption of an emergency rule under Section 2.109 of the Rules pertaining to the supervision of offenders from the Commonwealth of Massachusetts. The Compact statute does not provide for an alternative means of compact membership and the previous "transition period" for the applicability of the rules under the predecessor compact are now "null and void" based on the explicit provisions of the compact statutes of the member states.

Advisory Opinion MA-2004

Issued by: Richard L. Masters, Legal Counsel

Background

Patricia A. Coyne-Fague (Senior Legal Counsel, Rhode Island DOC) requested that the Interstate Commission for Adult Offender Supervision ("Commission") consider adoption of an emergency rule under Section 2.109 of the Rules of the Interstate Compact for Adult Offender Supervision ("ICAOS") pertaining to the supervision of offenders from the Commonwealth of Massachusetts ("MA"). In this regard a number of states have requested an opinion as to the legal effect of a proposed agreement by and between the Commission and MA which has not yet enacted and is not a member of ICAOS. This agreement proposes that the Commission enter into an agreement permitting the transfer of offenders between and among MA and the states which are members of the ICAOS until such time as MA enacts the ICAOS. Currently 49 states and the District of Columbia have enacted the ICAOS. MA is the only jurisdiction in the continental United States which has failed to do so.

Applicable Rules & Statute

In considering this question reference must be made to the specific provisions of the Compact statute which has been adopted by the member states. Article XI provides that the initial effective date of the Compact occurred "upon enactment into law by the 35th jurisdiction." This event occurred in June of 2002. Article XI further provides that subsequent to that date the ICAOS becomes "effective and binding as to any other Compacting State, upon enactment of the Compact into law by that State." This section requires that in order for a state to become a member of the Compact it must be done by legislative enactment. The legislatures of the states which have enacted the Compact have not provided an alternative means of adoption. In at least one reported case a State's attempted adoption of a compact by an alternative method from the other member states was null and void. ***See Sullivan vs. DOT, 708 A.2d 481 (Pa. 1998).***

Analysis & Conclusion

The agreement which the Commonwealth of Massachusetts seeks from the Commission is for all Compacting States to agree to supervise MA offenders under the same terms as provided under the rules of the ICAOS which became effective August 1, 2004. In essence MA is requesting to become a member of the Compact without enacting the ICAOS into law. Based on the reasoning in ***Sullivan supra***., this proposal raises significant legal questions as to the authority of the Commission to enter into such an agreement as well as the legal validity of such an agreement. Moreover, even if such an agreement were construed to constitute something other than an attempted "adoption" of the Compact by MA through an alternative means not provided under the statute, there are other troubling legal issues presented by such an arrangement. These include questions as to the authority of the

Commission to enforce the provisions of the Compact and its Rules against MA in the event of noncompliance and the inequity created by allowing this jurisdiction to participate when it has not and may not be required to make the statutorily required dues payments which all member states have paid since the ICAOS became effective in 2002. In other words, MA will receive the benefits of compact membership without the corresponding financial or other legal accountability which is imposed upon the member states by statutes and the Commission would not have the legal authority to enforce such requirements with respect to a nonmember state.

While the previous Compact administration under the “old compact” the Parole and Probationers Compact Administrators Association (PPCAA) was still functioning a transitional rule was adopted by both the Commission and the PPCAA based upon the provisions of Article VIII of the ICAOS which specifically provided that “The existing rules governing the operation of the previous compact superceded by this Act shall be null and void twelve (12) months after the first meeting of the Interstate Commission created hereunder.” This statutorily provided “grandfather clause” has now expired and the Commission has adopted new rules which took effect on August 1, 2004.

Summary

In summary, it is clearly permissible for Massachusetts to enter into individual interstate agreements concerning the transfer of offenders with any other states choosing to do so through Executive action by the Governors of those states or through the process of legislative enactment. However there are significant legal questions as to the authority of the Commission to enter into such an agreement under either the emergency rule provisions of Section 2.109 of the Compact rules or through the Commission’s regular rulemaking process, because the Compact statute does not provide for an alternative means of compact membership and the previous “transition period” for the applicability of the rules under the predecessor compact are now “null and void” based on the explicit provisions of the compact statutes of the member states.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 2-2005
Issued: 2005-03-04
Reviewed: 2019-03-19

Requested by: Florida
At Issue: Arresting & Detaining Compact Probationers and Parolees. Authority of officers to arrest an out-of-state offender sent to Florida under the ICAOS on probation violations.

Advisory Opinion 2-2005

Issued by: Don Blackburn, Executive Director and Richard L. Masters, Legal Counsel

Background:

Pursuant to Rule 6.101, the State of Florida requested an advisory opinion concerning the authority of its officers to arrest an out-of-state offender sent to Florida under the ICAOS on probation violations. Relying in part on a 1947 Florida Attorney General Opinion (Fla. Op. Atty. Gen. 047-371) and a legal memorandum entitled *Illegality of Florida Probation Officers' Arrest of Out-of-State Probationers or Parolees*, which we understand was prepared by a public defender, the question has arisen regarding the power of Florida officials to arrest and detain an offender whose supervision was transferred pursuant to the ICAOS. Both the 1947 Attorney General Opinion and the legal memorandum assert that because the Interstate Compact on Probation and Parole (the precursor to the ICAOS) and the ICAOS itself speak only to "supervision" of out-of-state offenders, and because Florida has no statute vesting its officers with arrest powers over such offenders, there is no authority for its officers to arrest and detain an out-of-state offender for violating the terms and conditions of their supervision. The legal memorandum in particular relies on several Commission rules noting the limited circumstances under which an offender is subject to retaking by the sending state and the process of retaking. The memorandum also relies generally on the U.S. Supreme Court's holding in *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), which outlined limited due process requirements in probation revocation proceedings.

Initially, it is necessary to address the due process considerations raised by the reliance on *Gagnon v. Scarpelli, supra*, and to clarify its application to retaking (as distinguished from revocation) proceedings. The *Gagnon* decision has proved to be a source of confusion, which has led to an understanding of due process and implied rights, which may not be appropriate or necessary in this context. Although Rule 5.108 requires that the offender be afforded a probable cause hearing prior to retaking, the rule does not define the nature of that hearing. Several courts have, however, addressed the nature of the retaking hearing. For example, in *Ogden v. Klundt*,550 P.2d 36, 39 (Wash. Ct. App. 1976), the court held that the scope of review in the receiving state in a retaking proceeding was limited to a determination of: (1) the scope of the authority of the demanding officers, and (2) the identity of the person to be retaken. Allegations of due process violations in the actual revocation of probation or parole are matters properly addressed during proceedings in the sending states after the offender's return. See, People ex rel. *Crawford v. State, 329 N.Y.S.2d 739* (N.Y. 1972); *State ex rel. Nagy v. Alvis*, 90 N.E.2d 582 (Ohio 1950); *State ex rel. Reddin v. Meekma*, 306 N.W.2d 664 (Wis. 1981); *Bills v. Shulsen*, 700 P.2d 317 (Utah 1985).

While other courts have held that an offender subject to retaking may be entitled to a more robust due process hearing, those cases have generally dealt with circumstances where there is a great geographical difference between the sending and receiving states. In *California v. Crump*, 433 A.2d 791 (N.J. Super. Ct. App. Div. 1981), for example, the court held that before an offender could be returned to the sending state pursuant to the ICPP, the trial court was required – considering the distance between

California and New Jersey – to conduct an on-site probable cause hearing and determine whether a *prima facie* case of violation was established. Relying on *Morrissey* and *Gagnon*, the court held that due process requires some minimal inquiry be conducted at or reasonably near the place of the alleged violation as promptly as possible while information is fresh and sources are available. The court noted that, "It may be that the evidence at the hearing will demonstrate that appellant at all times attempted to comply with the conditions of probation but was prevented from doing so by administrative confusion, as his attorney suggests. Or it may appear that appellant has been uncooperative and obdurate in performing his end of his bargain for his liberty. This may swiftly be determined and he will be fairly returned to the sending sovereign." *California v. Crump*, 433 A.2d at 794. *See also, Fisher v. Crist*, 594 P.2d 1140 (Mont. 1979); *State v. Maglio*, 459 A.2d 1209 (N.J. Super. Ct. 1979)(when a sentencing state is a great distance from a supervising state, an offender can request a hearing to determine if a *prima facie* case of probation violation has occurred; the hearing will save the defendant the inconvenience of returning to that state if there is absolutely no merit to a probation violation claim).

However, if the violation on which the claim was based occurred in a state other than the state in which the offender is held, the probable cause hearing may be substantially less than what is required in other contexts. In this latter situation, it is sufficient for officials conducting the probable cause hearing be satisfied on the face of any documents presented by the demanding state that an independent decision maker in that state has made a *preliminary* determination that there is probable cause to believe the offender committed a violation. *In re Hayes*, 468 N.E.2d 1083 (Mass. Ct. App. 1984). Such a determination is entitled to full faith and credit in the asylum state and can, therefore, form the basis of retaking by the sending state without additional hearings. Id. The offender is entitled to notice. The hearing may be non-adversarial. The offender, while entitled to a hearing, need not be physically present given the limited scope of the proceeding. Id. Cf., *Quinones v. Commonwealth*, 671 N.E.2d 1225 (Mass. 1996) (juveniles transferred under the interstate compact not entitled to a probable cause hearing in Massachusetts before being transferred to another state to answer pending delinquency proceedings when the demanding state had already found probable cause); *Doucette*, 676 N.E.2d 1169 (Mass. Ct. App.1997) (once the governor of the asylum state has acted on a request for extradition based on a demanding state's judicial determination that probable cause existed, no further judicial inquiry may be had on that issue in the asylum state; a court considering release on habeas corpus can do no more than decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive).

In summary, these cases represent the proposition that, with a limited exception, an offender subject to retaking generally does not enjoy the same due process rights in the asylum state as those enjoyed in the sending state during the actual revocation proceedings. Therefore, to the extent that any party relies upon *Gagnon* or *Morrissey v. Brewer*, 408 U.S. 471 (1972) for the proposition that offenders subject to retaking enjoy the same due process rights as offenders subject to revocation, such a reliance is misplaced. To be clear, an offender subject to retaking is entitled to due process both under the Rule 5.108 and court precedence. However, the level of due process to which the offender is entitled may be less in the retaking context than in the actual revocation process. Offenders subject to revocation have a right to not to have their probation or parole arbitrarily revoked. Offenders subject to retaking enjoy Compact transfers purely as an exercise of discretion by the sending state; that is, there is minimal liberty interest involved because there is no "right" to transfer that creates a recognized liberty interest and there is no immediate danger of the offender's liberty interests will be irrevocably affected.

This discussion is important when considering the question: Do officers in a receiving state have the authority to arrest and detain an out-of-state probationer for probation violations that occur in that state? To answer this question, it is necessary to examine the nature of the relationship between the authorities in the sending state and receiving state and the three general circumstances under which an arrest can be made.

Courts define the relationship between sending state and receiving state officials as an agency relationship. Courts generally recognize that in supervising out-of-state offenders the receiving state is

acting on behalf of and as an agent of the sending state. In *State v. Hill*, 334 N.W.2d 746 (Iowa 1983), the Iowa Supreme Court reversed a trial court decision admitting an out-of-state offender to bail. The Court found that the offender's status was not determined by Iowa's domestic law, but rather the Interstate Compact for Probation and Parole and the sending state's authorities. The Court further found that, "For purposes of determining appellee's status in the present case, we believe that the Iowa authorities should be considered as agents of the sending state." Other courts have similarly held. See e.g., 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 decision of Pennsylvania with respect to whether the apprehended probationer should be considered for release on bond and the courts of Ohio should recognize that fact."). Therefore, in supervising out-of-state offenders, officials in the receiving state do not act exclusively as authorities of that state and its domestic law, but also act as agents of the sending state and are, therefore limited to a certain extent by the decisions of sending state officials.

Applicable Rules & Statute

Arrests of out-of-state offenders generally occur under one of three broad categories. First, an out-of-state offender is clearly subject to arrest and detention for committing a new offense in the receiving state. Rules 5.101[1] and 5.102 recognize that an offender may be held in a receiving state for the commission of crime and *is not* subject to retaking unless the receiving state consents, the term of incarceration on the new crime has been completed, or the offender has been placed on probation. The authority to incarcerate an offender principally implies that the offender is subject to arrest for committing an offense.

Second, an out-of-state offender is subject to arrest and detention upon demand of the sending state based on its intention to retake the offender. This can occur based on a demand by the receiving state or because the sending state intends to revoke probation or parole. Under this circumstance, the sending state may issue a warrant for the offender and request that the receiving state arrest and detain the offender pending retaking. Courts have routinely recognized the right of a receiving state to arrest and detain an offender based on such a demand from a sending state. See e.g., State ex rel. *Ohio Adult Parole Authority v. Coniglio*, 610 N.E.2d 1196 (Ohio Ct. App. 1993) (offender cannot be admitted to bail pending retaking); *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); *Stone v. Robinson*, 69 So.2d 206 (Miss. 1954). The ICAOS recognizes the right of a sending state to retake an offender at any time. See, INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION, ART. I, PURPOSE. The sending state's demand to retake an offender implies the power of receiving state officials to arrest and detain the offender pending the completion of retaking proceedings. Rule 5.111 recognizes this implied power by prohibiting receiving state officials from allowing bail or other release conditions to an offender.

The third circumstance under which officials in a receiving state may effectuate the arrest of an out-of-state offender is for probation violations that occurred in the receiving state. This third circumstance creates misunderstandings because the offender may or may not be charged with committing a new offense in the receiving state and the sending state may not have initiated retaking proceedings. Nevertheless, courts have recognized that out-of-state offenders are subject to arrest for probation violations that occur in the receiving state. For example, in *Kaczmarek v. Longsworth*, 1997 U.S. App. LEXIS 3406 (6th Cir. 1997), the Court of Appeals held that an out-of-state probationer was entitled to be released from detention for a probation violation under the standards set by Ohio *for its own probationers and parolees*. (Emphasis added). In that case, a Michigan probationer residing in Ohio was investigated for inappropriate conduct towards a minor. Ohio officials arrested the offender for violating his probation,conducted a probable cause hearing and found probable cause for repeated conduct constituting serious supervision violations. The probationer argued that his due process rights were violated and that it was cruel and unusual punishment for Ohio officials to incarcerate him after being informed by a Michigan probation officer that Michigan had not authorized a hold or detainer and was

not currently seeking the probationer's extradition. In upholding the dismissal of the offender's § 1983 action, the court held:

> *The Interstate Compact expressly provides that "each receiving state [Ohio, in this instance] will assume the duties of visitation of and supervision over probationers or parolees of any sending state [i.e. Michigan] and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees." (Citation omitted). There has been no showing that Mr. Kaczmarek was entitled to be released on April 1, 1994, under the standards set by Ohio for its own probationers and parolees*

Although the *Kaczmarek* decision occurred within the context of the Interstate Compact on Probation and Parole, the decision does purport that at least one federal court of appeals considers it permissible to arrest and detain an out-of-state probationer. The ICAOS rules require the receiving state to supervise out-of-state offenders under the same standards as it would supervise in-state offenders. *See*, Rule 4.101. Following the *Kaczmarek* reasoning, if an in-state offender is subject to arrest by a probation officer, an out-of-state offender would also be subject to arrest.

Additionally, there are public policy reasons under the ICAOS that support the power to arrest an out-of-state offender for violating the terms and conditions of supervision. The purpose of the ICAOS is not solely to regulate the *movement* of adult offenders across state lines. Rather,regulating the movement of adult offenders fulfills the critical purposes of promoting public safety and protecting the rights of crime victims. *See*, INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION, ART. I. All activities of the Interstate Commission and the member states are directed at promoting these two overriding purposes. All member states, their courts and agencies, are required to take all necessary action to "effectuate the Compact's purposes and intent." *See*, INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION, ART. IX, § A. It does not fulfill the purpose and intent of the ICAOS for a state to maintain that it has the power to arrest its own offenders for probation violations, but is powerless to arrest an out- of- state offender for similar violations, regardless of whether the latter threatens the safety of the community or disregards the direct purposes of probation supervision.

In seeking to have supervision transferred to another state, the offender accepts that a sending state can retake, that no formal extradition proceeds are required, and that he or she is subject to the same type of supervision as other offenders in the receiving state. *See*, INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION, ART. I. *See also*, Rules 3.109 & 4.101. The receiving state can even add additional requirements on an offender as a condition of transfer. *See*, Rule 4.103. In short, a probationer or parolee is subject to whatever reasonable conditions the sentencing court or corrections authority deems necessary to promote both community safety and offender rehabilitation. The offender accepts probation or parole on a conditional basis – fulfilling the requirements imposed upon him or her. Failure to comply with these requirements,whether in the sending state, receiving state, or third party asylum state, requires state officials to take all reasonable and necessary measures to ensure compliance or to return the offender to the same status held before probation or parole. If a receiving state fails to arrest and detain an out of-state offender for probation violations that if committed by an in-state offender would warrant arrest, it does not promote community safety or comply with terms and conditions the offender agreed to when they accepted release and requested transfer.

Two final points should be noted. First, it is possible that certain officers in a receiving state charged with supervising offenders do not have the power to arrest. Such officers may, however,have the power to effectuate an arrest through an appropriate law enforcement agency. Therefore, even in the absence of the power to physically arrest an offender, officers may effectuate an arrest in cooperation with the appropriate local or state law enforcement officials. Second, officials in a receiving state should not confuse the power to arrest with the right of indefinite detention. When an out-of-state offender is arrested and detained for a probation violation, minimal due process considerations require that the

offender's status be resolved reasonably quickly. Officials in the sending state should be notified and the offender given a preliminary hearing to determine whether the arrest is justified and whether the offender should be held pending retaking by the sending state. Officials conducting such a hearing can release the offender should the arrest prove unwarranted or the sending state deem the violations insubstantial to justify retaking. Absent providing the offender with quick access to such a hearing, authorities in a receiving state could arbitrarily detain out-of-state offenders with little regards to the offender's liberty interests or the consequences of their actions. Such an arrest and detention policy would clearly be unconstitutional even under the most minimal standards of due process.

1
On August 28, 2013, the Commission adopted Rule 5.101-1, which now applies to pending felony or violent crime charges

Analysis & Conclusion

In supervising out-of-state offenders, authorities in a receiving state possess a dual status. First,they act to supervise such an offender under the same standards as any in-state offender. Second, they act as agents for the sending state to supervise and effectuate the purposes of the offender's supervision. Courts have unequivocally recognized that out-of-state offenders can be arrested and detained for (1) committing new crimes in the receiving state and (2) upon request of the sending state pending retaking. Additionally, out-of-state offenders may be arrested and detained for failing to comply with the terms and conditions of their supervision if such a failure would have resulted in an arrest of a similarly situated in-state offender. As noted above, these arrests can be effectuated by the supervising officer or, in absence of their arrest powers, in cooperation with local and/or state law enforcement.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 4-2005
Issued: 2005-05-05

Requested by: Oklahoma
At Issue: Whether a supervised individual who does not meet the eligibility requirements for mandatory transfer under Rule 3.101 or for misdemeanor eligibility under Rule 2.105 may nonetheless be transferred under Rule 3.101-2 as a discretionary transfer.

Advisory Opinion 4-2005

Issued by: Don Blackburn, Executive Director and Richard L. Masters, Legal Counsel

Background

The State of Oklahoma has requested guidance under Rule 6.101 regarding the scope of Rule 3.101-2. Oklahoma notes that certain supervised individuals do not qualify for mandatory transfer under Rule 3.101, due to offense type, lack of residency or employment in the receiving state, or other unmet criteria, and similarly may not qualify under Rule 2.105. Oklahoma seeks clarification on whether Rule 3.101-2 permits such individuals to transfer under the Compact when doing so would support successful supervision or rehabilitation.

Applicable Statute & Rules

Article I: Purpose of the Compact

> *"...the compacting states recognize that there is no right of any offender to live in another state."*

Rule 2.110: Transfer of Supervised Individuals Under this Compact:

> *(a) No state shall permit a supervised individual who is eligible for transfer under this compact to relocate to another state except as provided by the Compact and these rules.*

Rule 3.101: Mandatory Transfer of Supervision:

> *At the discretion of the sending state, a supervised individual shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the supervised individual:*
>
> *a. has more than 90 calendar days or an indefinite period of supervision remaining at the time the sending state transmits the transfer request; and*
>
> *b. has a valid plan of supervision; and*
>
> *c. is in substantial compliance with the terms of supervision in the sending state; and*

d. is a resident of the receiving state; or

e.

1. *has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and*
2. *can obtain employment in the receiving state or has means of support.*

Rule 3.101-2: Discretionary Transfer of Supervision:

a. A sending state may request transfer of supervision of a supervised individual who does not meet the eligibility requirements in Rule 3.101, where acceptance in the receiving state would support successful completion of supervision, rehabilitation of the supervised individual, promote public safety, and protect the rights of victims.

b. The sending state shall provide sufficient documentation to justify the requested transfer.

c. The receiving state shall have the discretion to accept or reject the transfer of supervision in a manner consistent with the purpose of the compact specifying the discretionary reasons for rejection.

Analysis

Article I and Rule 2.110 make clear that individuals subject to the Compact have no right to relocate outside the sending state and may do so only as permitted by ICAOS rules. Consequently, supervised individuals who do not meet mandatory eligibility requirements under Rule 3.101 ordinarily must remain under supervision in the sending state.

However, Rule 3.101-2 provides an exception, allowing that "A sending state may request transfer of supervision of a supervised individual who does not meet the eligibility requirements in Rule 3.101, where acceptance in the receiving state would support successful completion of supervision, rehabilitation of the supervised individual, promote public safety, and protect the rights of victims."

Rule 3.101-2 serves as a "safety valve," allowing for case-by-case discretion when both the sending and receiving states agree that transfer would serve the interests of justice, public safety, and rehabilitation. This flexibility supports the Compact's overall purpose of promoting accountability and effective supervision across state lines.

Conclusion

A supervised individual who is under supervision within the meaning of the Compact but is ineligible for mandatory transfer under Rule 3.101 may nonetheless be transferred under Rule 3.101-2 as a discretionary transfer, provided that both the sending and receiving states agree that good cause exists and the transfer serves the purposes of the Compact.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 6-2005
Issued: 2005-06-13

Requested by: Washington
At Issue: Whether supervised individuals subject to Washington's "deferred prosecution" statute, Chapter 10.05.020 et seq. RCW, are subject to the Interstate Compact for Adult Offender Supervision and therefore eligible for transfer of supervision under Rule 2.106.

Advisory Opinion 6-2005

Issued by: Don Blackburn, Executive Director and Richard L. Masters, Legal Counsel

Background:

Pursuant to Rule 6.101 the state of Washington has requested an advisory opinion as to whether or not supervised individuals 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 supervised individual 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 supervised individual 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.

Applicable Rules

Rule 1.101 Definitions:

> *"Supervised individual" means an "offender" defined by Article II of the Interstate Compact for Adult Offender Supervision 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 Compact.*

"Supervision" means the oversight exercised by authorities of a sending or receiving state over a supervised individual for a period of time determined by a court or releasing authority, during which time the supervised individual is required to report to or be monitored by supervising authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the supervised individual at the time of release to the community or during the period of supervision in the community.

Rule 2.106: Supervised Individuals Subject to Deferred Sentences:

(a) Supervised individuals subject to deferred sentences are eligible for transfer of supervision provided that all other criteria for transfer, as specified in Rule 3.101 (a), (b), and (c) have been satisfied and the:

1. *supervised individual has waived their right to trial and entered plea of guilt or no contest, and*
2. *plea has been accepted by the court.*

Analysis

While neither definition makes reference to a specific type of adjudication or plea, Rule 2.106 applies when the defendant has entered a plea of guilty 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 individual in a program of conditional release, the successful completion of which may result in the sealing or expungement of the criminal record.

Based on the statutory provisions described in Chapter 10.05.020 et. seq., RCW, Rule 2.106 applies 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 supervised individual 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 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 supervised individual 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 supervised individual 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 supervised individuals and the uniform application of the provisions of the Compact and the rules to the states.

Conclusion

Individuals supervised under Washington's deferred prosecution statute are subject to the Compact and eligible for transfer under Rule 2.106. Although labeled "deferred prosecution," the process functions as a deferred sentence for Compact purposes, and treating it otherwise would undermine uniform application of the Compact.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 8-2005
Issued: 2005-11-21

Requested by: Illinois
At Issue: Whether a receiving state may determine that a supervised individual is not in substantial compliance in the sending state, and therefore deny a mandatory transfer based solely on the supervised individual's arrest, pending charges, or outstanding warrants in the receiving state during the investigation period.

Advisory Opinion 8-2005

Issued by: Don Blackburn, Executive Director and Richard L. Masters, Legal Counsel

Background:

Pursuant to Rule 6.101 the State of Illinois requested, the State of Illinois requested clarification of Rule 3.101. Illinois asked whether a receiving state may conclude that a supervised individual is not in substantial compliance with the terms of supervision in the sending state when the supervised individual commits a crime in the receiving state during the investigation period, or when the supervised individual has an outstanding warrant in the receiving state.

Illinois reports two situations prompting this request:

1. A supervised individual met transfer criteria and was granted reporting instructions. The receiving state later denied acceptance based on the supervised individual's arrest for a new offense in the receiving state during the investigation period.
2. In another case, the receiving state refused to respond to a transfer request because the supervised individual had been arrested in the receiving state and was therefore "not available," stating it would deny the request if Illinois required an immediate reply.

Illinois maintains that outstanding warrants or pending charges in the receiving state are irrelevant to determining substantial compliance, particularly where the receiving state has taken no action other than arrest or issuance of a warrant.

Applicable Rules

Rule 1.101: Definitions:

> *"Substantial Compliance" means that a supervised individual is sufficiently in compliance with the terms and conditions of his or her supervision so as not to result in initiation of revocation of supervision proceedings by the sending state.*

Rule 3.101: Mandatory Transfer of Supervision:

> *At the discretion of the sending state, a supervised individual shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the supervised individual:*

(a) has more than 90 calendar days or an indefinite period of supervision remaining at the time the sending state transmits the transfer request; and
(b) has a valid plan of supervision; and

(c) is in substantial compliance with the terms of supervision in the sending state; and

(d) is a resident of the receiving state; or

(e)

1. *has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and*
2. *can obtain employment in the receiving state or has means of support.*

Analysis

As we pointed out in ICAOS Advisory Opinion 7-2004, the intent of Rule 3.101 as derived from its plain meaning, is that the sending state initially controls the decision to allow the supervised individual to transfer under the Compact and the receiving state has no discretion whether or not to accept the case as long as the supervised individual satisfies the criteria provided under this rule.

Rule 3.101 (c) requires that the supervised individual must be in "*substantial compliance*" with the terms of supervision in the sending state. The facts of the Illinois case that prompted this request involved a supervised individual who met the criteria for transfer to the receiving state and had been given reporting instructions; however, the receiving state denied acceptance of supervision based on the supervised individual not being in substantial compliance because of an arrest for a new offense in the receiving state during the period of investigation. In another case, Illinois reported that the receiving state indicated it could not reply to the request for transfer because the supervised individual was not available for supervision due to a new arrest. This resulted in incarceration pursuant to the arrest but prior to either a trial or conviction. The receiving state indicated that if the sending state needed a reply immediately it would send a denial.

While Rule 3.101 places the initial decision to transfer a supervised individual under the compact with the sending state, the addition of the "s*ubstantial compliance*" requirement to the criteria set forth in this rule was to prevent the transfer of supervised individuals who are not in compliance with the terms and conditions of their supervision in the sending state as the result of other pending criminal charges. However, as emphasized in ICAOS Advisory Opinion 7-2004, such charges pending in the receiving state are "irrelevant to the transfer decision, when the issuing authority has taken no action." While the previous advisory opinion has already addressed the question which Illinois raises as to "outstanding warrants" the question of whether a subsequent arrest for an alleged crime committed during the investigation was not directly considered. However, it appears that the same logic should apply. Whether the charges are pending as the result of an outstanding warrant or an arrest for a new alleged offense, it is not a sufficient basis under the foregoing rules to reject transfer of a supervised individual where the sending state has taken no action and has not specifically determined that a basis exists for revocation proceedings. Such action unjustifiably prohibits supervised individuals who are residents of the receiving states to which they wish to transfer from returning home who in many cases have no resources in the sending state. Notwithstanding this reasoning, the receiving state should report these outstanding warrants and arrests to the sending state which may be considered in the determination as to whether the supervised individual is in substantial compliance with the terms of supervision in the sending state.

Conclusion

Based on the above analysis and the text of the referenced rules of the Compact, unless the sending

state has taken action on an outstanding warrant or is actively seeking to take the supervised individual into custody under a new arrest warrant or has specifically determined that these new or pending charges are the basis for a revocation proceeding, then the transfer application should not be rejected only on this basis.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: HIPAA-2005
Issued: 2005-08-26

Requested by: Pennsylvania
At Issue: Guidance from the U.S. Department of Health & Human Services, Office of Civil Rights as to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") Coverage & Exemptions for the Interstate Compact for Adult Offender Supervision

Advisory Opinion HIPAA-2005

Issued by: Richard L. Masters, Legal Counsel

Background:

This is in response to the request to the Executive Director from Pennsylvania for citation to authority from the U.S. Department of Health & Human Services,Office of Civil Rights concerning applicability of the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), **45 CFR Parts 160 and 164**, to the Interstate Compact on for the Supervision of Adult Offenders ("ICAOS"). As you are aware ICAOS is the only state or federal law which regulates the transfer of supervised adult offenders, across state lines and promotes the proper supervision and rehabilitation of covered adult offenders. The underlying question raised by Pennsylvania seeks clarification as to whether or not the activities, including the disclosure and tracking of protected health information, of state agencies which administer the ICAOS, acting pursuant to the provisions of the Compact and its authorized rules are exempt from the applicability of HIPAA and the privacy rule promulgated thereunder.

Applicable Rules & Statute

In considering this question it is useful to note that the HIPAA privacy rules are intended to protect an individual's privacy while allowing important law enforcement functions to continue. (**See HIPAA Privacy Rule & Public Health, Guidance from Center for Disease Control and The U.S.Department of Health and Human Services, April 11, 2003**). Thus, HIPAA exempts certain disclosures of health information for law enforcement purposes without an individual's written authorization. The various conditions and requirements concerning these exempt disclosures are contained in the regulatory text of the HIPAA privacy rule and may be found at **45 CFR 164 et. seq**.

Analysis & Conclusion

Under these provisions protected health information may be disclosed for law enforcement purposes when such disclosures are required by law. Thus, disclosure of protected health information required to be furnished by or received from state agencies which administer the ICAOS acting pursuant to the provisions of the compact and its authorized rules is permissible. [**See 45 CFR 164.512 (f)(1)(i)**]. In addition exempt disclosures include those in which a response is required to comply with a court order. [**See 45 CFR 164.512 (f)(1)(ii)(A)-(B)**]. Under this provision, the disclosure and tracking of protected health information, among authorized compact administrators'offices, concerning any adult offender subject to compact supervision pursuant to court order, as required by the Compact and its authorized rules would be exempt from HIPAA. (**See OCR Summary of the HIPAA Privacy Rule – April 11, 2003; See also OCR Guidance Explaining Significant Aspects of the Privacy Rule – December 4,2002)**.

The more general provisions of the HIPAA privacy rules allow disclosures of protected health information when consistent with applicable law and ethical standards, including disclosures to a law

enforcement official reasonably able to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public. [**45 CFR 164.512 (j)(1)(i**)]; or to identify or apprehend an individual who appears to have escaped from lawful custody [**See 45 CFR 164.51`2 (j)(1)(ii)(B)**]. These provisions would apply to adult offenders under ICAOS supervision who have absconded or otherwise violated the terms of their supervision and need to be apprehended and retaken. (**OCR Guidance Explaining Significant Aspects of the Privacy Rule – December 4,2002**).

Additionally HIPAA specifically authorizes disclosures of protected health information to law enforcement officials who need the information in order to provide health care to the individual and for the health and safety of the individual. [**45 CFR 164.512 (k)(5)**]. Under these provisions it appears that disclosures of health information which are required to provide for treatment of adult offenders subject to the ICAOS would also be exempt from HIPAA requirements.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 5-2006
Issued: 2006-04-04

Requested by: North Dakota
At Issue: Whether a receiving state may exceed the 45-day investigation period under Rule 3.104 when additional steps are required for sex offender cases (e.g., residency restrictions, risk level determinations, community notification). Whether a receiving state may require the sending state to complete sex-offender risk levels or community notification before accepting a transfer under Rule 4.101.

Advisory Opinion 5-2006

Issued by: Don Blackburn, Executive Director and Richard L. Masters, Legal Counsel

Background:

Pursuant to Rule 6.101 (c) North Dakota has requested an advisory opinion concerning the application of Rule 3.104 - Time allowed for investigation by Receiving State and Rule 4.101 - Manner and degree of supervision.

North Dakota poses the following:

> *"May the receiving state exceed the 45 calendar day rule, under Rule 3.104, to determine if the supervised individual's supervision plan is valid for sex offenders? Many states have either a state law or internal policies that require clarification of residency restrictions, establishing of sex offender risk levels or community notification requirements. May the receiving state exceed the 45 calendar rule, under Rule 3.104, by citing their right to determine whether the supervised individual's supervision plan is valid by conducting residency restrictions, establishing of sex offender risk levels, or community notification requirements before they respond to the sending state's transfer investigation request?"*
>
> *"Under Rule 4.101, may the receiving state require prior to acceptance of a sex offender the establishing of a sex offender risk level or community notification on sending states probationers when the receiving state does not require the establishing of a sex offender risk level or community notification on their own probationers.?"*

Applicable Rules

Rule 3.104 Time Allowed for Investigation by Receiving State:

> *(a) A receiving state shall complete an investigation and respond to a sending state's request for a supervised individual's transfer of supervision no later than the 45th calendar day following receipt of a completed transfer request in the receiving state's compact office.*
>
> *(b) If a receiving state determines that a transfer request is incomplete, the receiving*

state shall notify the sending state by rejecting the transfer request with the specific reason(s) for the rejection. If
the supervised individual is in the receiving state with reporting instructions, those instructions shall remain in effect provided that the sending state submits a completed transfer request within 15 business days following the rejection.

(c) If a receiving state determines that a supervised individual's plan of supervision is invalid, the receiving state shall notify the sending state by rejecting the transfer request with specific reason(s) for the rejection. If the receiving state determines there is an alternative plan of supervision for investigation, the receiving state shall notify the sending state at the time of rejection. If the supervised individual is in the receiving state with reporting instructions, those instructions shall remain in effect provided that the sending state submits a completed transfer request with the new plan of supervision within 15 business days following the rejection.

Rule 4.101 Manner and Degree of Supervision in Receiving State:

(a) A receiving state shall supervise individuals transferred under the interstate compact in a manner consistent with the supervision and risk level of other similarly sentenced individuals sentenced in the receiving state.

(b) If a supervised individual violates conditions of supervision, the individual may be sanctioned in the receiving state during the term of supervision in a manner consistent with similarly sentenced individuals in the receiving state.

(c) Receiving states shall document the use of incentives, corrective actions, graduated responses, and other supervision techniques.

Relevant Case Law

- *Interstate Commission for Adult Offender Supervision v. Tennessee Board of Probation and Parole* (E.D. Ky. 2005)

- *Doe v. Ward*, 124 F. Supp. 2d 900 (W.D. Pa. 2000)

Analysis

The plain meaning of Rule 3.104 is that states have 45 days to complete investigations once the application has arrived in the receiving state compact office.

North Dakota's justification for its inquiry is premised on the assumption that many states have special laws or policies pertaining to sex offenders which require clarification of residency restrictions and establishing sex offender risk levels or community notification requirements. Under the current rules as referenced herein there is no provision for using the type of crime to define how the above referenced rule will be applied as to the stated time period.

The receiving state's investigation as contemplated under Rule 3.104 is in part to determine if the transfer request meets the criteria under Rule 3.101 and if the sending state has presented a valid plan of supervision. While there is no question that the receiving state has the authority to substantiate the

validity of the transfer, the rule gives no discretion to extend the time frame of 45 days to complete the review.

With respect to the requested opinion concerning Rule 4.101 North Dakota asks if the receiving state may require the sending state to establish the sex offender's risk level or community notification when the receiving state does not require the establishment of either risk level or community notification on its own supervised individuals.

The provisions of Rule 4.101 clearly refer to a supervised individual who has already been "transferred" to a receiving state and requires such a supervised individual to be supervised ". . . in a manner consistent with the supervision of other similar individuals sentenced in the receiving state." This rule must be read together and consistently with Rule 3.101 which unequivocally provides that once a sending state grants permission, the receiving state must assume supervision over the supervised individual and any state which attempts to condition the acceptance of such a supervised individual on a special condition to be imposed prior to the transfer violates the Compact. See also *Interstate Commission for Adult Offender Supervision v. Tennessee Board of Probation and Parole et al, (U.S. District Court, Eastern District of Kentucky#04-526-KSF, 2005)*, see also *Doe v. Ward, 124 F. Supp.2d 900 (W.D. Penn. 2000)*. Under Rule 4.101, as interpreted by at least two federal courts, states which have statutes, policies, memorandum of understandings, assessments and other restrictions which are imposed on their own supervised individuals may only be applied to compact supervised individuals once the transfer request has been accepted as provided in Rule 4.103 (a). States cannot impose such restrictions prior to the acceptance of the transfer.

Conclusion

Based on the literal language and plain meaning of the Rule 3.104 (a) 45 calendar days is the maximum time a receiving state has under the rules to respond to a sending state's request for transfer.

The provisions of Rule 4.101 only apply to the manner in which a receiving state supervises a supervised individual who has already been transferred in compliance with the provisions of the compact and the rules. Specifically, Rule 3.101 does not permit a receiving state to place conditions and requirements on supervised individuals prior to transfer under the compact. The clear language of Rule 4.103 (a) states that special conditions may be imposed by the receiving state after a supervised individual has transferred. (See *ICAOS v. Tennessee Board of Probation and Parole, supra*; see also *Doe v. Ward, supra*.)

Moreover, Rule 4.101 plainly requires the receiving state to supervise an individual transferred in a manner "**consistent with the supervision of other similar supervised individuals sentenced in the receiving state.**" Clearly, this portion of the rule does not permit a receiving state to impose the establishment of sex offender risk level or community notification on supervised individuals transferred under the compact if it does not impose these same requirements on supervised individuals sentenced in the receiving state.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 6-2006
Issued: 2006-04-26

Requested by: Massachusetts
At Issue: Clarification of 90 day period of supervision is determined.

Advisory Opinion 6-2006

Issued by: Don Blackburn, Executive Director and Richard L. Masters, Legal Counsel

Background

Pursuant to Commission Rule 6.101(c) the Commonwealth of Massachusetts has requested an Opinion regarding Commission Rule 3.101. Massachusetts states as follows:

> *We are seeking an interpretation of rule 3.101 with regards to eligibility in how the ninety (90) day period of supervision remaining is determined. Is an offender eligible for transfer if there is ninety (90) days or more of supervision remaining at the time of the request, or must there be ninety (90) days or more of supervision remaining at the time the receiving state renders a decision?*

Applicable Rules and Statutes

Rule 3.101 states:

> *At the discretion of the sending state an offender shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the offender:*
>
> *(a) has more than 90 days or an indefinite period of supervision remaining; and*
>
> *(b) has a valid plan of supervision; and*
>
> *(c) is in substantial compliance with the terms of supervision in the sending state; and*
>
> *(d) is a resident of the receiving state; or*
>
> *(e) (1) has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and (2) can obtain employment in*

the receiving state or has a visible means of support.

Analysis and Conclusion

Since there is no specific language in the rule regarding how the 90 day period contemplated by this rule should be determined, we must look to the meaning of the words used and the context of the rule as well as custom and practice under the current rule. The rule in question appears in Chapter 3 of the ICAOS rules under the heading “Transfer of Supervision.” Each of the rules in this chapter deals with some aspect of transfer of supervision under the compact, including, but not limited to eligibility, submission of a transfer request, acceptance of an offender, investigation, reporting instructions, expedited transfers and the required contents of an application for transfer of supervision. Implicit in the rules contained in this chapter is the assumption that the time frame in which each of these rules is considered is at the beginning of the transfer process.

Consistent with the general tenor of Chapter 3 and the context in which this rule appears as well as the overarching purpose of the compact which is “to provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community. . .” (See Article I),it is a reasonable construction of this rule to conclude that the 90 day period contemplated in Rule 3.101 (a) should be determined at the time a sending state submits a request for transfer of the offender who at the time of said application must have “more than 90 days or an indefinite period of supervision remaining.”

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 7-2006
Issued: 2006-04-26

Requested by: Pennsylvania
At Issue: Whether the determination of "a second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol" under Rule 2.105(a)(3) is based on:
1. the total number of DUI convictions in the supervised individual's lifetime, or
2. how the sentencing court classifies the DUI for sentencing purposes

Advisory Opinion 7-2006

Issued by: Don Blackburn, Executive Director and Richard L. Masters, Legal Counsel

Background

Pursuant to Commission Rule 6.101 (c) The Commonwealth of Pennsylvania has requested assistance in the interpretation of Rule 2.105 (a)(3), specifically the determination of what constitutes "a second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol." As Pennsylvania phrases the question:

> *Is it simply the total number of convictions for DUI in a lifetime or is it the manner in which the DUI was sentenced that determines a second or subsequent DUI offense for the purpose of Rule 2.105? If the sentence imposed by a court for a DUI specifically indicates that the DUI is being treated as a first offense for sentencing purposes, should that case be considered a first offense for compact purposes and thus not eligible for transfer under Rule 2.105?*

> *In order for states to make uniform decisions regarding the transfer and acceptance of DUI cases, it would be helpful to have clarification on this issue through an Advisory Opinion from the Commission.*

Applicable Rules and Statutes

Rule 2.105: Misdemeanants:

> *(a) A misdemeanor supervised individual whose sentence includes 1 year or more of supervision shall be eligible for transfer, provided that all other criteria for transfer, as specified in Rule 3.101, have been satisfied; and the instant offense includes one or more of the following—*
>
> 1. *an offense in which a person has incurred direct or threatened physical or psychological harm;*
> 2. *an offense that involves the use or possession of a firearm;*
> 3. *a 2nd or subsequent misdemeanor conviction of driving while impaired by drugs or alcohol;*
> 4. *a sexual offense that requires the supervised individual to register as a sex offender*

in the sending state.

Analysis

Commission Rule 2.105 defines the types of misdemeanor offenses for which a convicted supervised individual "shall be eligible for transfer under the Compact. Rule 2.105 (a) (3) specifies one of those types of offenses as: "a second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol;" Several states have statutory provisions under which a Judge can sentence a current DUI as a first offense when there has been a specified period of time between the instant DUI offense and prior DUI convictions. Rule 2.105 (a) (3) provides no such discretion but unequivocally provides that if the "instant offense includes . . . a second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol" that such a supervised individual "shall be eligible for transfer." The rule provides no exceptions to applicability based on either the time period between the first and subsequent offense(s) or the jurisdiction in which the convictions occurred. Because the Compact has been granted Congressional consent, its provisions as well as its authorized rules are equivalent to and have the effect of federal law. See *Cuyler v. Adams, 449 U.S. 433 (1981*); T*exas v. New Mexico, 482 U.S. 124 (1987)*. Thus, both the compact and rules are enforceable on the states under both the Supremacy Clause and the Contract Clause of the federal Constitution and take precedence over conflicting statutes, executive actions or judicial orders. See *WMATA v. One Parcel of Land, 706 F.2d 1312 (4th Cir. 1983)*, also *Doe v. Ward, 124 F. Supp.2d 900 (W.D. Penn. 2000*). See also *Interstate Commission for Adult Offender Supervision v. Tennessee Board of Probation and Parole, et al. (U.S. Dist. Ct. E. D. KY. 2005)*. Thus, even if the sentencing court considers the DUI conviction to be a "first offense" for "sentencing purposes," the provisions of Rule 2.105 (a)(3) prevail and any supervised individual who has in actuality been previously convicted of a DUI misdemeanor offense shall be eligible for transfer under the Compact based on the plain meaning of this rule.

Conclusion

Under Rule 2.105(a)(3), eligibility is determined by the actual number of DUI convictions, not by how the sentencing court classifies the offense. A supervised individual with any prior DUI misdemeanor conviction qualifies as having "a second or subsequent offense" and is therefore eligible for transfer under the Compact, regardless of how the court designates the offense for sentencing purposes.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 8-2006
Issued: 2006-06-19
Revised: 2019-03-19

Requested by: Massachusetts
At Issue: Whether a receiving state can predicate acceptance to a residential program with a condition obligating the sending state to retake if the offender fails to complete the program. If this condition is acceptable, would the Commission sustain a request to remove the offender because they failed said program.

Advisory Opinion 8-2006

Issued by: Don Blackburn, Executive Director & Richard L. Masters, Legal Counsel

Background

Pursuant to Commission Rule 6.101, Massachusetts has requested an advisory opinion concerning the application of Rule 3.101-2.[1]

Specifically Massachusetts asks the following:

> *a) Is it permissible, under Rule 3.101-2, for a receiving state to predicate acceptance of an offender into a residential program with a condition obligating the sending state to order the return or issue a warrant for the retaking, if the offender were to be terminated or self-discharged prior to completion of the program?*
>
> *b) If such a conditional acceptance is deemed permissible, under Rule 3.101-2, would the Commission sustain a request by the receiving state to remove an offender, if the criteria of this special provision were met?*

Applicable Rules and Statutes

Rule 3.101-2 states:

> *(a) A sending state may request transfer of supervision of an offender who does not meet the eligibility requirements in Rule 3.101.*
>
> *(b) The sending state must provide sufficient documentation to justify the requested transfer.*
>
> *(c) The receiving state shall have the discretion to accept or reject the transfer of supervision in a manner consistent with the purpose of the Compact.*

An application for transfer of supervision based solely on the offender participating in a treatment facility in the receiving state is clearly a discretionary transfer under Rule 3.101-2 given that the offender does not meet any of the criteria outlined in Rule 3.101 governing mandatory transfers under the compact. Rule 3.101-2 is purposefully written to provide discretion in determining if an offender's transfer is logical. The rule provides that the receiving state "shall have the discretion to accept or

reject the transfer of supervision in a manner consistent with the purpose of the compact." As provided in Article I, the purpose of the compact is:

> *". . . through means of joint and cooperative action among the compacting states: to provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits and obligations of the compact among the compacting states.*

Based on the above, it is clear that the compact seeks to facilitate the movement of offenders where they are more likely to be successfully rehabilitated, as long as both victims and the other members of the community are adequately protected. However, concern exists when states accept offenders into treatment facilities with no other known resources in their state such as family or employment. An offender could potentially be on a path to failure if he or she is released from the program in a receiving state where these resources do not exist, but may exist back in the sending state. In such cases, it is generally the sending state's intent for the offender to return to the sending state after completing the treatment program where support mechanisms are available.

Essentially, Massachusetts seeks to add a condition to the acceptance of a discretionary transfer for treatment requiring the sending state to retake the offender if he or she fails the program in the receiving state.

Rule 4.103[2] regarding conditions states:

> *a) At the time of acceptance or during the term of supervision, the compact administrator or supervising authority in the receiving state may impose a special condition on an offender transferred under the interstate compact if the special condition would have been imposed on the offender if sentence had been imposed in the receiving state.*
>
> *b) A receiving state shall notify a sending state that it intends to impose or has imposed a special condition on the offender, the nature of the special condition, and the purpose.*

This rule requires that under both the mandatory transfer criteria of Rule 3.101 and discretionary transfers under Rule 3.101-2 that the receiving state first investigate a transfer request based on the compact criteria. After this occurs, at the time of acceptance, or during supervision, they may then add conditions consistent with what they would impose on an in-state offender.

Even though the receiving state has more discretion with regard to transfer requests under Rule 3.101-2 the exercise of such discretion must be reasonable. Further, a decision to accept or reject a discretionary transfer must be consistent with the compact's purpose. If the receiving state believes, in the reasonable exercise of its discretion, that the transfer will promote the success of the offender and at the same time adequately protect the rights of victims and the community, it may add conditions that would facilitate that transfer if they are conditions that the state would impose on its own offenders.

Analysis and Conclusion

Is it permissible, under Rule 3.101-2, for a receiving state to predicate acceptance of an offender into a residential program with a condition obligating the sending state to order the return or issue a warrant for the retaking, if the offender were to be terminated or self-discharged prior to completion of the program?

The Court in *ICAOS v. Tennessee Board of Probation & Parole (U.S. Dist. Ct., E. Dist. of KY, 04-526-KSF, 2005)* made reference to the mandatory criteria in Rule 3.101 in rendering its decision that a receiving state could not add conditions or requirements prior to the acceptance of a transfer under Rule 3.101. Although this opinion request references only discretionary transfer cases under Rule 3.101-2, the conditions requirements of Rule 4.103 also apply to discretionary transfers, which the receiving state may impose "at the time of transfer or during the term of supervision."

Thus, under Rule 3.101-2, if the receiving state considers the transfer request on the basis of the compact's purpose, and reasonably determines that it would be in the best interest of the offender and provide adequate public safety, it could accept the case and then add conditions. Because the receiving state has discretion under this particular rule, it would be appropriate to add a condition requiring the sending state to retake the offender in the event the offender fails to successfully complete the treatment program. Because the offender has no other resources or support mechanisms in the receiving state, both the rehabilitation of the offender and the interests of public safety would be served by a condition that the offender be returned immediately to the sending state.

Massachusetts also asks if the Commission would "sustain a request" by the receiving state to remove an offender in the event of a failure to complete said program.

Neither the Executive Director nor Legal Counsel have the authority to determine in advance what specific action the Commission would take in response to such a hypothetical case. Under the compact and its rules, which the Commission is authorized to enforce, should such a condition be imposed, the sending state would be expected to initiate retaking procedures by ordering the offender's return or issuing a warrant if the offender fails to complete the treatment program.

[1] *On October 2, 2015, the Commission amended Rule 3.101-2 (a) to include: "where acceptance in the receiving state would support successful completion of supervision, rehabilitation of the offender, promote public safety, and protect the rights of victims."*

[2] *On September 14, 2016, the Commission approved an amendment to Rule 4.103 removing the word "special" before conditions as all conditions should be considered equally. Language was also added to this rule to better clarify a receiving state's ability to impose and enforce conditions.*

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 9-2006
Issued: 2006-08-07

Requested by: Minnesota
At Issue: An offender being in the receiving state prior to investigation as a valid reason for rejection.

Advisory Opinion 9-2006

Issued by: Don Blackburn, Executive Director & Richard L. Masters, Legal Counsel

Background

Pursuant to Commission Rule 6.101(c) the State of Minnesota has requested an Opinion regarding Commission Rule 2.110. Minnesota states the following:

> *Minnesota is requesting a formal opinion regarding an offender being in the receiving state prior to the investigation being completed as a valid reason for rejection. Does it matter if the case is a mandatory case or not? Does the Compact allow for the receiving state to hold the investigation until the sending state returns the offender at which time the receiving state can start the investigation?*

Applicable Rules and Statutes

Commission Rule 2.110 States:

> *(a) No state shall permit an offender who is eligible for transfer under this compact to relocate to another state except as provided by the Compact and these rules.*

> *(b) An offender who is not eligible for transfer under this Compact is not subject to these rules and remains subject to the laws and regulations of the state responsible for the offender's supervision.*

Rule 2.110 contains a mandatory requirement of compliance with the provisions and procedures of the compact and the rules as a condition of permitting an offender to relocate from a sending state to a receiving state. This prerequisite applies to mandatory transfers of offenders under supervision under Rules 3.101 and 3.101-1 as well as discretionary transfers of offenders under Rule 3.101-2. The rules governing compact transfers are set forth in Rules 3.102, 3.103, 3.104, 3.104-1, 3.105, 3.106, 3.107, 3.108, 3.108-1, and 3.109. These rules provide the procedures which must be followed with regard to applications for transfer, transfer requests, investigations, acceptance of transfers, reporting instructions, expedited transfers and victim notification. Among these requirements are specific provisions such as Rule 3.103 (a) which prohibits a sending state from allowing a supervised offender to relocate to a receiving state without the receiving state's acceptance, with the exception of travel permits which may be granted but which are also subject to procedural requirements set forth in that rule. Such acceptances are premised on investigations which the receiving states are required to be

given a reasonable opportunity to conduct prior to the offender being allowed to leave the sending state under the provisions of Rule 3.102(b), with the exception of travel permits under Rule 3.103(b). It is presumed in Rule 3.103 (a) that a sending state will not allow a compact offender to relocate to a receiving state and therefore this subsection is silent on the subject of the sending state retaking the offender if in violation this provision; however, when read together with subsection 3.103(b)(5)(B) it is clear that the intent of this rule is to require the sending state to initiate the retaking of an offender whose transfer request is rejected and who relocates in violation of these provisions by issuing a warrant or an order to return to the sending state.

Analysis and Conclusion

Both the language and intent of the above rules, including Rule 2.110 unequivocally require that the above referenced procedures set forth in the Rules must be followed in all transfers of eligible offenders and the failure to do so is a violation of the compact and the Rules. Unquestionably, states which allow eligible offenders to transfer prior to the receiving state having an opportunity to investigate are in violation of the Compact under Rule 3.102(b) and Rule 2.110. In such circumstances the receiving state can properly reject the request for transfer of such an offender, until returned to the sending state, due to the prior failure of the sending state to comply with the requirements of the compact and the rules as referenced above.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 11-2006
Issued: 2006-09-07

Requested by: North Carolina
At Issue: Clarification of rule 4.112 and closing supervision by the receiving state.

Advisory Opinion 11-2006

Issued by: Don Blackburn, Executive Director & Richard L. Masters, Legal Counsel

Background

Pursuant to Commission Rule 6.101(c) the State of North Carolina has requested an Opinion regarding Commission Rule 4.112. North Carolina inquires as follows:

> *North Carolina is respectfully requesting an interpretation of Rule 4.112, Closing supervision by the receiving state, specifically (a) (2) and (3) (A) and (B) of the rule.*
>
> *If a receiving state closes interest pursuant to the above rules, is the offender still subject to retaking under the compact agreement if located by the receiving state? If not, what assurance does the receiving state have that the offender will leave the state or that the sending state will order the return of the offender?*

Applicable Rules and Statutes

ICAOS Rule 4.112 states:

> *(a) The receiving state may close it's 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 supervision in the receiving state;*
> >
> > *(3)*
> >
> > > *(A) Notification to the sending state of the sentencing of the offender to incarceration for 180 days or longer and receipt from the sending state of a warrant and detainer or other acknowledgement by the sending state of responsibility for the offender within 90 days of the notification. If the sending state fails to provide the warrant and detainer or other acknowledgement within 90 days of notification, the receiving state may close its supervision of the offender.*

(B) After 90 days the sending state shall be responsible for the offender.

(4) Notification of death; or

(5) Return to sending state.

Analysis and Conclusion

This rule, with the possible exception of a discharge of the offender from supervision pursuant to the offender's original application as provided in 4.112 (a)(1), does not determine whether an offender is subject to the compact. The purpose of the rule is to allow a receiving state to close an offender's file when supervision becomes impossible due to absconding supervision (per subsection (a)(2); or failure of the sending state to provide warrant and detainer (per subsection (a)(3); notification of death (per subsection (a)(4); or return of the offender to the sending state (per subsection (a)(5). Thus, the closing of supervision by the receiving state under Rule 4.112 does not preclude the offender from being subject to the jurisdiction of the compact unless the original terms of supervision under which the offender became eligible for supervision have expired as provided in subsection (a)(1).

Whether the offender flees the original receiving state and is apprehended in a third state or is apprehended in the original receiving state, Article I of the Compact and Rule 5.107 specifically authorize officers of a sending state to enter a state where the offender is found and apprehend and retake the offender notwithstanding case closure under Rule 4.112 with the exception of cases in which the original term of supervision has expired.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 13-2006
Issued: 2007-08-01
Revised: 2019-03-19

Requested by: Washington
At Issue: Clarification on offenders who are undocumented immigrants.

Advisory Opinion 13-2006

Issued by: Richard L. Masters, Legal Counsel

Background

Pursuant to Commission Rule 6.101(c) the State of Washington is requesting an opinion regarding Commission Rule 3.101 as it relates to undocumented immigrants. Washington asks the following:

1. *If an offender seeking to transfer under ICAOS and is an undocumented immigrant, does this status make the offender ineligible for transfer?*
2. *What if the offender is released to supervision under a court order to obey all laws, and the state of being undocumented may violate this condition?*
3. *If an offender who was transferred to Washington has a parole condition that requires the offender to obey all laws, does the offender's status as an undocumented immigrant render the offender in violation of his condition? If so, is it a significant violation that could result in retaking by the sending state from Washington?*

Applicable Rules and Statutes

Considering these questions in order:

1) If an offender seeking to transfer under ICAOS is an undocumented immigrant, does this status make the offender ineligible for transfer?

First, an undocumented immigrant who meets the definition of "*Offender*" under Article II of the Compact and Rule 1.101 of the ICAOS Rules and seeks to transfer under the Compact and its rules is subject to the jurisdiction of the Compact. While such person's status as an "undocumented" immigrant would not necessarily disqualify an immigrant from transferring under the Compact, the applicable rules may result in the transfer's denial due to the immigrant's inability to meet eligibility criteria. For example, under *Rule 3.101* it must be established that the immigrant is a "*resident*" of the state to which transfer is sought or that the immigrant has "*resident family*" in the receiving state. If the immigrant has not lived in the receiving state for the required one year period or the receiving state is not the principal place of residence, or cannot establish that family members have resided in the receiving state for the required time period, obviously the offender would not be eligible for transfer under the mandatory transfer requirements of *Rule 3.101*.

Similarly, the immigrant's status as "undocumented" could disqualify such a person from being eligible for transfer under *Rule 3.101* if this status renders the immigrant not in "*substantial compliance*" with the terms of supervision in the sending state as required under *Rule 3.101(c)*. Since the definition of "*substantial compliance*" under Rule 1.101 means that the offender is in sufficient compliance with the terms and conditions of supervision in the sending state to prevent revocation proceedings, if the sending state revokes an immigrant's parole or probation as the result of being undocumented, then such a person is disqualified from transfer under Compact Rule 3.101. It may seem anomalous that an undocumented immigrant whose status as such constitutes a per se violation of federal law could ever

be considered to be in “substantial compliance” with the terms of supervision. As defined in Rule 1.101 and applied in Rule 3.101 (c), “substantial compliance” requires this result if the sending state does not revoke probation or parole when an offender is an undocumented immigrant.

2) What if the offender is released to supervision under a court order to obey all laws, and the state of being undocumented may violate this condition?

The second question assumes that an undocumented immigrant, with a condition of supervision to obey all laws, is placed under supervision notwithstanding their status as an undocumented immigrant, and then asks if the status of being undocumented violates this condition. This is a decision that must be made by the court, which is responsible for the initial decision as to whether or not the offender is entitled to be released to the community under supervision. If the sentencing court determines that the immigrant’s status is that of being undocumented, and therefore presumably in violation of federal law, it is difficult to understand why such court would release the offender to supervision in the community. However, if the court is aware of this status and nevertheless releases the offender to supervision, then it is logical to proceed with determining whether the offender qualifies for transfer under the provisions of Rule 3.101.

3) If an offender who was transferred to Washington has a parole condition that requires the offender to obey all laws, does the offender’s status as an undocumented immigrant render the offender in violation of this condition? If so, is it a significant violation that could result in retaking by the sending state from Washington?

The third question raises the issue of whether the offender transferred to Washington with a parole condition requiring compliance with all laws is in violation of that condition as a result of being undocumented and, if so, whether this constitutes a “*significant violation*,” which could result in the sending state retaking the offender

Rule 5.101(a) specifies that retaking by the sending state is at the sole discretion of the sending state. Exceptions to this Rule are pending felony or violent crime charges or convictions, offender engages in behavior requiring retaking, or the offender absconds from supervision. See ICAOS rules, 5.101-1, 5.102, 5.103 and 5.103-1. Further, if an offender is transferred under the ‘discretionary transfer’ provisions of Rule 3.101-2, the receiving state may add a condition to that acceptance requiring the offender to be retaken upon determination that the offender is undocumented.

Analysis and Conclusion

In summary the advisory opinion concludes:

1. An undocumented immigrant who meets the definition of “offender” and seeks to transfer under the Compact is subject to the jurisdiction of the Compact and the immigrant’s status as “undocumented” would not be a per se disqualification as long as the immigrant establishes that the prerequisites of Rule 3.101 have been satisfied. This includes the requirement that the immigrant be in ‘substantial compliance’ with the terms and conditions of supervision in the sending state.
2. If a Court knowingly releases an undocumented immigrant to supervision under the compact, the language of the current rules requires that the supervision of such an offender must be transferred if the mandatory criteria of Rule 3.101 are met and the sending state does not revoke parole or probation based upon an offender’s status as an undocumented immigrant.
3. Under Rule 5.101 retaking of an undocumented immigrant is at the sole discretion of the sending state unless the offender comes within the exceptions provided in Rule 5.102 (upon conviction for a new felony offense and completion of incarceration or placement on probation) or as provided in Rule 5.103 (upon a showing that the offender has committed three or more significant violations arising from separate incidents which establish a pattern of non-compliance with the conditions of supervision). In the event that the offender was transferred under the ‘discretionary

transfer' provisions of Rule 3.101-2 and the receiving state has added a special condition to the acceptance of said discretionary transfer which would require retaking of the offender upon determination that the offender is undocumented, then such a special condition would appear to be permitted under the Compact and the rules as was previously concluded in Advisory Opinion 8-2006.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 14-2006
Issued: 2006-08-15

Requested by: Michigan
At Issue: Whether a state may collect its annual sex-offender registration fee from supervised individuals who have transferred to another state, and whether the receiving state has any obligation to collect or enforce payment of that fee under Rule 4.107(b)(2).

Advisory Opinion 14-2006

Issued by: Don Blackburn, Executive Director & Richard L. Masters, Legal Counsel

Background

Pursuant to ICAOS Rule 6.101(c) the State of Michigan has requested an Opinion regarding Rule 4.107 (b)(2) as it relates to states charging supervision fees. Michigan states the following:

> *Michigan has been made aware that Wisconsin has begun charging Wisconsin supervised individuals residing in another state a fee, called a 'sex offender registration fee.' This fee, in the amount of $50.00 is assessed on an annual basis to Wisconsin supervised individuals, including those who transfer into the State of Wisconsin and those Wisconsin supervised individuals that transfer to other states.*
>
> *Michigan is requesting an advisory opinion as to whether these Wisconsin supervised individuals transferred into another state must pay this fee and whether the receiving state has any responsibility in collecting this fee.*
>
> *According to Wisconsin Commissioner William Rankin, S.301.45 (10) Wisconsin Statute, provides that WI DOC may "require a person who must register as a sex offender and who is in its custody or on probation, parole or extended supervision to pay an annual fee to partially offset its cost in monitoring persons on probation, parole or extended supervision." The fee may not exceed $50.00.*
>
> *Michigan believes this is in violation of Rule 4.107 (b)(2). Although Wisconsin is not calling the fee a supervision fee, the money will be used to "offset the WI DOC costs in monitoring these sex offenders". The transferred sex offenders in question are being monitored by the Michigan Department of Corrections.*

Wisconsin responds as follows:

> *Thank you for this opportunity to reply to Michigan's belief that the annual registration fee imposed on sex offenders required to be listed in Wisconsin's Sex Offender Registry is a "supervision fee" prohibited by Rule 4.107 (b) (2). The letter from Mr. John S. Rubitschun, Deputy Director of Field. Operations Administration, Michigan Department of Corrections, states in part, "Although Wisconsin is not calling the fee a supervision fee, the money will be used to 'offset the WI DOC costs of monitoring these sex offenders'. The transferred sex offenders in question are being monitored by the Michigan Department of Corrections."*

Mr. Rubitschun misunderstands the "monitoring" done by Wisconsin's Sex Offender Registration Program (SORP) when he equates it to the "monitoring" done by the Michigan Department of Corrections. In response to a series of questions from Cynthia Johnson, MI Compact Administrator, I advised Michigan on July 6, 2006, that the "monitoring" of sex offenders by the Sex Offender Registration Program is a distinctly different function than "supervision."

Unlike Michigan, Wisconsin's Sex Offender Registratioin Program (SORP) is operated by the Department of Corrections/Division of Community Corrections. Although part of the same division, SORP is a separate function from parole or court ordered supervision of offenders. SORP relies on its own staff to maintain and update registry information, at least annually, on roughly 18,500 sex offenders required to report their residence, school and employment addresses. Sex Offender Registration Specialists investigate non-compliance and prepare petitions for Criminal Complaints and war compliance. These specialists are not Probation and Parole Agents. They have no role in "supervision" of registered sex offenders, whether or not they are currently serving periods of probation, parole or extended supervision.

In 2005, the legislature amended WI Stats:,·s.301.45 Sex offender registration, to authorize the department to require an annual fee, up to $50, be paid by registered sex offenders in the department's custody. The annual registration fee collections are deposited in a separate appropriation account. Broadly speaking, the DOC may request spending authority to use money from this appropriation account for any "monitoring" purpose, including sex offender "supervision" costs, e.g. GPS monitoring, polygraph testing, etc. However, the intent of the fee is to offset the increasing expenses associated with SORP activity and associated staffing requirements.

When a registered sex offender leaves Wisconsin, there is no reduction in the offender's obligation to report information to SORP. Nor is there any reduction in the work required of SORP. Wisconsin SORP continues "monitoring" transferred registered sex offenders while they are in other states. Michigan's Department of Corrections assumes none of the responsibility for that monitoring when it accepts transfer of supervision of a registered sex offender.

In response to Mr. Rubitschun's question about Michigan's responsibility to collect the annual registration fee for Wisconsin, it seems clear that Rule 4.108 Collection of fines and other costs relieves Michigan of any obligation in this regard. Even if the rule were not in place, Wisconsin has never requested that assistance from Michigan, nor has it been contemplated.

Wisconsin is mindful of Rule 4.107 Fees. Wisconsin charges a supervision fee, authorized under WI Stats., s.304.074, Reimbursement fee for persons on probation, parole and extended supervision. The fee is to "partially reimburse the department [of corrections] for the costs of providing supervision and services." The Division of Community Corrections' Operations Manual instructs Probation and Parole Agents that "Wisconsin offenders shall continue to pay supervision fees until arrival and acceptance in another state. Upon notification of acceptance and arrival in another state, the Wisconsin agent will submit a Supervision Fee Action Report ... to stop the charges."

Applicable Rules

Rule 4.107: Fees

(a) Application fee—A sending state may impose a fee for each transfer application prepared for a supervised individual.
(b) Supervision fee—

1. *A receiving state may impose a reasonable supervision fee on an individual whom the state accepts for supervision, which shall not be greater than the fee charged to the state's own individuals under supervision.*
2. *A sending state shall not impose a supervision fee on an individual whose supervision has been transferred to a receiving state.*

Rule 4.108: Collection of Restitution, Fines and Other Costs

(a) A sending state is responsible for collecting all fines, family support, restitution, court costs, or other financial obligations imposed by the sending state on a supervised individual.
(b) Upon notice by the sending state that the supervised individual is not complying with family support and restitution obligations, and financial obligations as set forth in subsection (a), the receiving state shall notify the supervised individual of the violation of the conditions of supervision and the supervised individual's requirement to comply. The receiving state shall inform the supervised individual of the address to which payments are to be sent.

Analysis

The Wisconsin Statute refers to this fee assessed to registered sex offenders an "annual fee" which is imposed on all registered sex offenders to partially defray the costs associated with monitoring requirements which are unique to this category of supervised individuals, such as sex offender registration and victim notification. The sending state cannot charge a "supervision fee" to a supervised individual whose supervision has been transferred to a receiving state under Rule 4.107. However, according to Wisconsin this is not a "supervision fee" because it has no direct relationship to the supervision of such individuals, but rather is an annual assessment imposed on sex offenders, to partially offset the costs of sex offender registration and victim notification and is not a recurring monthly fee directly related to the ongoing supervision of such individuals by parole or probation officers.

Based on the information submitted, because the fee imposed annually under Wisconsin law does not appear to be for the purpose of the supervision of such individuals by parole or probation officers and instead is for the purpose of defraying the cost of sex offender registration and victim notification, it does not appear to fit the criteria of a "supervision fee" and may be collected on Compact supervised individuals.

However, under ICAOS Rule 4.108 (a) Wisconsin is solely responsible for the collection of such an annual assessment. While there is no requirement that Michigan undertake to require payment of this fee by a supervised individual, under Rule 4.108 (b), upon notice from Wisconsin that the individual is not complying with this financial obligation, Michigan must notify the individual that this is a violation of the conditions of supervision and must comply as well as providing the supervised individual with the address to which payments are to be sent.

Conclusion

Based on the rules and information provided, Wisconsin's annual sex-offender registration assessment is

not considered a “supervision fee” under Rule 4.107(b)(2) and therefore may be collected from compact-supervised individuals. Wisconsin remains solely responsible for the collection of the fee, while the receiving state must provide notice and enforcement action under Rule 4.108(b) if non-compliance is reported.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 16-2006
Issued: 2006-10-31
Revised: 2007-03-06

Requested by: Colorado
At Issue: Whether the phrase “an offense in which a person has incurred direct or threatened physical or psychological harm” in Rule 2.105(a)(1) requires physical touching or whether it also includes harm caused through other instrumentalities, such as the use of a vehicle or a weapon.

Advisory Opinion 16-2006

Revised (2nd revision February 4, 2026)

Issued by: Don Blackburn, Executive Director & Richard L. Masters, Legal Counsel

Background

The state of Colorado requested an Advisory Opinion pursuant to Rule 6.101 concerning the meaning of the “physical harm” requirement of 2.105 (a)(1).

Colorado asked: “Does ‘(1) an offense in which a person has incurred direct or threatened physical or psychological harm’ mean that physical harm has to be physical touching of the supervised individual to the victim or does it include a weapon being used?’” Colorado also points out that the factual predicate leading to this opinion request involved injury by a vehicle in which the supervised individual, during the commission of a criminal act, caused serious injury to three victims. He was convicted of Assault 3 reckless/cause injury.

Applicable Rules

Rule 1.101 Definitions:

'Supervised Individual' means an “offender” defined by Article II of the Interstate Compact for Adult Offender Supervision 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 Compact.

Rule 2.105 Misdemeanants:

> *(a) A misdemeanor supervised individual whose sentence includes 1 year or more of supervision shall be eligible for transfer, provided that all other criteria for transfer, as specified in Rule 3.101, have been satisfied; and the instant offense includes one or more of the following—*
>
> 1. *an offense in which a person has incurred direct or threatened physical or psychological harm;*
> 2. *an offense that involves the use or possession of a firearm;*
> 3. *a 2nd or subsequent misdemeanor conviction of driving while impaired by drugs or alcohol;*

4. *a sexual offense that requires the supervised individual to register as a sex offender in the sending state.*

Rule 4.101: Manner and Degree of Supervision in Receiving State:

(a) A receiving state shall supervise individuals transferred under the interstate compact in a manner consistent with the supervision and risk level of other similarly sentenced individuals sentenced in the receiving state.

(b) If a supervised individual violates conditions of supervision, the individual may be sanctioned in the receiving state during the term of supervision in a manner consistent with similarly sentenced individuals in the receiving state.

(c) Receiving states shall document the use of incentives, corrective actions, graduated responses, and other supervision techniques.

Analysis

The application of the compact and its rules to any particular supervised individual is determined by the offense committed. Those who are subject to the jurisdiction of the compact are supervised individuals who have committed particular offenses. As noted in Chapter 3 of the ICAOS Benchbook, the compact covers a wide range of individuals and embraces supervised individuals subject to traditional forms of supervision as the result of a "conviction" as well as supervised individuals subject to innovative forms of supervision as the result of adjudications such as deferred sentencing. See, Rule 2.106

Regardless of the method of adjudication, the consistent theme in our advisory opinions and reflected in the compact and Commission rules is the requirement of legal action in the form of some type of court determination that the supervised individual committed the offense or offenses charged. Altering the status of a person from innocent to that of a supervised individual who has committed particularized criminal acts can only be accomplished through an adjudicatory process reaching a judicial determination. The requirement of specific legal action in the form of some type of adjudicatory action by a court merely recognizes the due process rights of individuals charged with criminal offenses and the right not be held accountable for crimes they did not legally commit. Thus, for example, an individual charged with both a felony offense and a misdemeanor offense not covered by Rule 2.105 (the misdemeanor rule) would not be subject to the compact *if the individual is adjudicated solely on the misdemeanor offense*. Adjudications, not charges, determine a person's status as a criminal and, therefore, their eligibility under the compact.

It is not possible to address the application of each state's criminal code and corresponding definitions within the context of Rule 2.105(a)(1). Neither the compact nor the rules defines "direct or threatened physical or psychological harm." However, the Model Penal Code does provide insight into what circumstances might trigger compact requirements for misdemeanant offenses. The Model Penal Code "effects a consolidation of the common law crimes of mayhem, battery, and assault and also consolidates into a single offense what the antecedent statutes in this country normally treated as a series of aggravated assaults or batteries." Commentary to Model Penal Code § 211.1. Thus, the traditional distinction between battery-type offenses ("direct harm") and assault-type offenses ("attempted harm") has largely eroded over the years with the adoption of the Model Penal Code by many states. Under the Model Penal Code simple assault, which may be considered in many states as misdemeanor-like conduct depending on its severity, covers those acts in which an individual "attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or (b) negligently causes bodily injury to another with a deadly weapon; or (c) attempts by physical menace to put another in fear

of imminent serious bodily injury." Model Penal Code § 211.1(1) (1962). The language of 2.105(a)(1) contemplates both assault offenses and battery offenses, without distinction.

In the instant matter, a person charged and adjudicated on a misdemeanor offense of assault would be subject to the compact pursuant to Rule 2.105(a)(1), assuming all other provisions of the compact and rules apply. The fact that the instrumentality of the harm was an automobile has no bearing on the determination of eligibility under Rule 2.105(a)(1). Each state establishes the elements of its own criminal laws. Rule 2.105(a)(1) addresses only the nature of the offense committed ("an offense in which a person has incurred direct or threatened physical or psychological harm"), not the particular instrumentality used in the commission of the offense. If the law of the sending state recognizes the use of an automobile as an element in an assault offense and the individual is so adjudicated, Rule 2.105(a)(1) applies.

Our opinion in this matter does not prevent states from exchanging information concerning underlying charges nor does it prevent a receiving state from taking such matters into consideration in determining supervision if such considerations are allowed by state law and applied equally to in-state and out-of-state supervised individual. See, Rule 4.101 (receiving state must supervise out-of-state supervised individuals in a manner consistent with similar individuals sentenced in receiving state). However, neither does our opinion mandate the exchange of charging information, particularly if disclosure is prohibited by law in the sending state. Our opinion reaches only the issue of eligibility to transfer supervision under the compact and affirms the principle that adjudication of an offense – not the offense charged or the instrumentality used in the commission of an offense – is what determines a supervised individual's status vis-à-vis the compact and its rules.

Conclusion

A person charged and adjudicated on a misdemeanor offense of assault would be subject to the compact pursuant to Rule 2.105(a)(1), assuming all other provisions of the compact and rules apply. The fact that the instrumentality of the harm was an automobile has no bearing on the determination of eligibility under Rule 2.105(a)(1). Each state establishes the elements of its own criminal laws. Rule 2.105(a)(1) addresses only the nature of the offense committed ("an offense in which a person has incurred direct or threatened physical or psychological harm"), not the particular instrumentality used in the commission of the offense. If the law of the sending state recognizes the use of an automobile as an element in an assault offense and the individual is so adjudicated, Rule 2.105(a)(1) applies.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 2-2007
Issued: 2007-05-09
Revised: 2026-02-04

Requested by: New Jersey
At Issue: Whether a supervised individual seeking transfer under the Compact may lack a "valid plan of supervision" under Rule 3.101(b) solely because they intend to reside in federally subsidized Section 8 housing.

Advisory Opinion 2-2007

Issued by: Don Blackburn, Executive Director & Richard L. Masters, Legal Counsel

Background

New Jersey has requested clarification regarding the interaction of federal statutes, rules, and regulations with Compact transfer eligibility when a supervised individual plans to reside in Section 8 housing. Some states have taken the position that any such transfer is precluded on this basis. Federal regulations prohibit only two specific categories of individuals from residing in federally subsidized housing:

1. Lifetime-registration sex offenders, and
2. Individuals convicted of manufacturing or producing methamphetamine on the premises of federally assisted housing.(24 C.F.R. § 960.204(a)(3); 42 U.S.C. § 13663(a))

Applicable Rules

Rule 1.101 Definitions:

> *'Plan of supervision' means the terms under which a supervised individual will be supervised, including proposed residence, proposed employment or viable means of support and the terms and conditions of supervision.*

Rule 3.101 Mandatory Transfer of Supervision:

> *At the discretion of the sending state, a supervised individual shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the supervised individual:*
> *(a) has more than 90 calendar days or an indefinite period of supervision remaining at the time the sending state transmits the transfer request; and*
> *(b) has a valid plan of supervision; and*
> *(c) is in substantial compliance with the terms of supervision in the sending state; and*

(d) is a resident of the receiving state; or

(e) has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and can obtain employment in the receiving state or has means of support.

Analysis

Except for the two specific categorical prohibitions under federal law—lifetime-registration sex offenders and individuals convicted of manufacturing methamphetamine in federally assisted housing—supervised individuals are otherwise eligible to reside in Section 8 housing. Compact Rule 3.101 does not create a *per se* prohibition to transfer on this basis. Therefore, a receiving state may deny transfer only if it can substantiate that the individual is specifically ineligible for the particular housing development. As noted in *ICAOS v. Tennessee Bd. of Prob. & Parole, 04-cv-526-KSF* (E.D. Ky. 2005), a receiving state cannot impose additional conditions or requirements before accepting a mandatory transfer. Likewise, a state may not blanket deny transfer solely because the individual plans to reside in Section 8 housing.

Conclusion

A receiving state is not authorized to deny a transfer of a supervised individual based solely on the fact that the individual intends to reside in Section 8 housing.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 3-2007
Issued: 2007-09-17

Requested by: Pennsylvania
At Issue: Denial of Reporting Instructions

Advisory Opinion 3-2007

Issued by: Ashley Hassan, Acting Executive Dir. & Richard L. Masters, Legal Counsel

Background

The State of Pennsylvania has requested an advisory opinion pursuant to Rule 6.101 concerning the denial of reporting instructions under Rule 3.103 (a)(2) for failure to comply with the requirements of Rule 3.101(b).

Applicable Rules and Statutes

Compact Rule 3.101, Mandatory transfer of supervision, provides as follows:

Rule 3.101, Mandatory transfer of supervision:

At the discretion of the sending state, an offender shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the offender:

(a) has more than 90 days or an indefinite period of supervision remaining; and

(b) has a valid plan of supervision; and

(c) is in substantial compliance with the terms of supervision in the sending state; and

d) is a resident of the receiving state; or

(e)

(1) has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and

(2) can obtain employment in the receiving state or has a means of support.

Rule 3.103, Reporting Instructions; Probation Exception to Rule 2.110 provides as follows:

Compact Rule 3.103, Reporting Instructions; Probation Exception to Rule 2.110

(a)(1) A reporting instructions request for an offender who was living in the receiving state at the time of sentencing shall be submitted by the sending state within seven calendar days of the sentencing date or release from incarceration to probation supervision. The

sending state may grant a seven-day travel permit to an offender who was living in the receiving state at the time of sentencing. Prior to granting a travel permit to an offender, the sending state shall verify that the offender is living in the receiving state.

(a)(2) The receiving state shall issue reporting instructions no later than 2 business days following receipt of such request from the sending state.

In its request, Pennsylvania states, it "has been challenged" for denying reporting instructions for sex offenders or domestic violence offenders living in Pennsylvania at the time of sentencing. This is based on investigations of home plans for such offenders establishing that the offenders would be in close proximity to schools, daycares, playgrounds etc. or would be living in the same residence as a victim. In such cases, Pennsylvania has based such denials on Rule 3.101(b) in that, such offenders are not eligible for transfer due to the failure of the sending state to establish a valid plan of supervision.

Thus, Pennsylvania seeks an advisory opinion as to whether such circumstances permit the receiving state to deny reporting instructions to offenders who are living in the receiving state at the time of sentencing based upon an investigation which reveals that an offender does not have a valid plan of supervision as required by Rule 3.101 (b).

Analysis and Conclusion

It is important to note, while the residency criteria set forth in Rule 3.101(a) differentiates between offenders qualifying for transfer based on residency in the receiving state under Rule 3.101(d) from offenders qualifying for transfer based on having resident family and obtaining employment under Rule 3.101(e)(1) and (2), this distinction does not negate the general requirements of Rule 3.101(a) through (c) including 'a valid plan of supervision.'

Thus, it is clear that the literal language and plain meaning of these rules requires that all mandatory transfers under Rule 3.101 are subject to the requirement of a valid plan of supervision. While the ICAOS Rules do not specifically itemize every circumstance which would invalidate a plan of supervision, as Pennsylvania points out, where an investigation of a home plan reveals that a sex offender or domestic violence offender is living in the same home as a victim or in close proximity to a school, daycare or playground such grounds have frequently been used in other jurisdictions as a basis for denial of eligibility for a mandatory transfer under Rule 3.101(b) for failure to provide a valid plan of supervision.

While Pennsylvania focuses its request on whether reporting instructions can be denied in such cases, instead it is the application for transfer which would presumably be denied under Rule 3.101(b) in the circumstances described. The provisions of Rule 3.103(e)(1) clearly require that an offender who has been granted reporting instructions prior to the investigation of a transfer request must return to the sending state upon rejection of the transfer request by the receiving state. An offender who fails to comply with the order of the sending state to return, is required to be retaken by the sending state under Rule 3.103 (e)(2). The provisions of Rule 3.103(e)(1) and (2) are premised on the proposition that the offender's continued lawful presence in the receiving state under the compact ultimately depends upon the determination of the offender's eligibility for transfer. If an investigation by the receiving state reveals a failure to provide a valid plan of supervision, the application for transfer could properly be denied. If this determination is made prior to the expiration of the time frames set forth in Rule 3.103(a), the issuance of reporting instructions has become moot. If the investigation has not been completed, reporting instructions are required to be issued as provided in Rule 3.103(a). Upon completion of the investigation, if the receiving state subsequently denies the transfer request on the same basis or upon failure to satisfy any of the other requirements of Rule 3.101, the provisions of Rule 3.103(e)(1) and (2) clearly require the offender to return to the sending state or to be retaken upon the issuance of a warrant.

Summary

In summary, where an investigation by the receiving state reveals that a transfer request for an offender living in the receiving state at the time of sentencing does not comply with the provisions of Rule 3.101(b) which requires a valid plan of supervision, a receiving state may properly deny the transfer request. If this determination is made prior to the expiration of the time frames set forth in Rule 3.103(a) the issuance of reporting instructions to such an offender has become moot. If the investigation has not been completed, reporting instructions are required to be issued as provided in Rule 3.103(a). Upon completion of investigation, if the receiving state subsequently denies the transfer on the same basis or upon failure to satisfy any of the other requirements of Rule 3.101, the provisions of Rule 3.103(e)(1) and (2) clearly require the offender to return to the sending state or be retaken upon issuance of a warrant.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 1-2008
Issued: 2008-03-17

Requested by: Massachusetts
At Issue: Clarification of Rule 3.101-3(c)(1) regarding sex offenders living in the receiving state at the time of sentencing and of Rule 4.103 regarding imposition and enforcement of special conditions.

1. Whether a sending state is required to provide details of the sex offense in a request for reporting instructions for sex offenders living in the receiving state at the time of sentencing, pursuant to Rule 3.101-3 (c)(1).

2. Whether a receiving state can deny a transfer request of an offender where the sending state has imposed a condition on the offender that the receiving state is unable to enforce.

3. Whether the provisions of the Compact and its rules supersede conflicting state laws.

Advisory Opinion 1-2008

Issued by: Harry E. Hageman, Executive Director & Richard L. Masters, Legal Counsel

Background

Pursuant to Commission Rule 6.101(c) the Commonwealth of Massachusetts has requested an advisory opinion regarding ICAOS Rule 3.101-3. In its request Massachusetts states as follows: Clarification of Rule 3.101-3(c)(1) regarding sex offenders living in the receiving state at the time of sentencing & of Rule 4.103 regarding imposition and enforcement of special conditions.

Applicable Rules and Statutes

Issue #1:

Whether a sending state is required to provide details of the sex offense in a request for reporting instructions for sex offenders living in the receiving state at the time of sentencing, pursuant to Rule 3.101-3 (c)(1).

Massachusetts Probation has received several requests for reporting instructions pursuant to Rule 3.101-3(c)(1) that lack any description of the sex offense. The request for reporting instructions form requires the sending state to provide information about the offense, specifically what the instant offense is, a description of the offense, and the length of the sentence. The form also seeks an explanation of the offender's sex offense history.

Some states have challenged Massachusetts' request for this information, claiming that the rule does not require the sending state to provide this information in its request for reporting instructions.

Issue #2:

Whether a receiving state can deny a transfer request of an offender where the sending state has

imposed a condition on the offender that the receiving state is unable to enforce.

Pursuant to M.G.L. c. 265, § 47, and c.127, § 133D1/2, Massachusetts sex offenders sentenced to probation or court ordered parole or are under community parole supervision for life are required to be monitored using a global positioning system device (GPS). Accordingly, GPS monitoring is a statutory requirement imposed on these offenders in Massachusetts. However, some states do not have GPS monitoring capability and thus will be unable to enforce this condition if an offender seeks transfer from Massachusetts to that state under the Compact.

Our confusion arises because the language in the rule appears to be different from the interpretation given to it by the Bench Book.

In pertinent part, Rule 4.103, Special conditions states:

> *"(d) A receiving state that is unable to enforce a special condition imposed in the sending state shall notify the sending state of its inability to enforce a special condition at the time of request for transfer of supervision is made."*

In pertinent part, the Bench Book states in Ch. 3.6.1 General Considerations:

> *"A sending state can also impose a special condition on an offender as a condition of transferring supervision. However, in this context the receiving state must be given an opportunity to inform the sending state of its inability to meet a special condition. This should be of particular concern to judges (emphasis supplied). Although a court may as a condition of probation impose a special condition and require that the condition be met in the receiving state, the receiving state can refuse to provide supervision if the condition cannot be met (emphasis added). The receiving state's inability to enforce a special condition requires the sending state to either: (1) withdraw the special condition and allow the offender to relocate to the receiving state, or (2) withdraw the transfer request and continue to supervise the offender in the sending state. Courts would, therefore, be wise to determine in advance whether a special condition might cause rejection of a transfer due to an inability in the receiving state to meet the condition."*

Can a receiving state deny a transfer request because the sending state has imposed an unenforceable condition, as the Bench Book states, or does the receiving state's inability to enforce the condition merely require a decision on the part of the sending state to continue with the transfer despite the receiving state's inability to enforce the condition? In other words, the Bench Book appears to shift the balance toward the receiving state, despite any express language to that effect in the rule. Requiring a receiving state to "notify the sending state of its inability to enforce a special condition" in our view is not tantamount to allowing the receiving state to deny the request, or to require the sending state to remove the condition. It leaves it up to the sending state whether to allow the transfer, knowing that the condition will not be enforced.

Issue #3:

Whether the provisions of the Compact and its rules supersede conflicting state laws.

This issue is an extension of Issue #2. As stated above, GPS monitoring is a statutory requirement imposed on sex offenders under community supervision in Massachusetts. We are seeking some guidance as to what effect Massachusetts law is given under the Compact.

Pursuant to statute, our courts are required to impose GPS on these offenders. However, if the

Commission concludes that courts are required to remove the condition or face denial of a transfer request to a state that cannot enforce the condition, our courts will be in the unenviable position of effectively imposing a sentence in contravention of state law requirements. Moreover, if the offender returns to Massachusetts on a travel permit, which could include up to 45 days, he or she will be a Massachusetts offender in Massachusetts without the required instate GPS monitoring.

Analysis and Conclusion

Taking these questions in order, with regard to *Issue #1*:

Rule 3.101-3 provides as follows:

(c) Reporting instructions for sex offenders living in the receiving state at the time of sentencing Rule 3.103 applies to the transfer of sex offenders, except for the following:

> *(1) The receiving state shall have five business days to review the proposed residence to ensure compliance with local policies or laws prior to issuing reporting instructions. If the proposed residence is invalid due to existing state law or policy, the receiving state may deny reporting instructions.*
>
> *(2) No travel permit shall be granted by the sending state until reporting instructions are issued by the receiving state.*

ICAOS rule 3.101-3 (c) (1) clearly provides the receiving state with a meaningful opportunity to investigate the proposed residence of a sex offender who has made application for transfer under the compact. In cases such as stated by Massachusetts, where the sex offender is living in the receiving state at the time of sentencing, this is no less true. As was previously observed in ICAOS Advisory Opinion 3-2007, "The provisions of Rule 3.103 (e) (1) and (2) (governing offenders in the receiving state at time of sentencing) are premised on the proposition that the offender's continued lawful presence in the receiving state under the compact ultimately depends upon the determination of the offender's eligibility for transfer. If an investigation by the receiving state reveals a failure to provide a valid plan of supervision the application for transfer could properly be denied." An investigation in such cases would be largely meaningless without the cooperation of the sending state in providing sufficient details concerning the sex offense in question and a refusal to provide such information so as to allow the receiving state to make a reasonable determination as to whether the proposed residence violates local policies or laws would appear to violate the intent of this rule.

As to *Issue # 2*:

Rule 4.103 concerning special conditions does not authorize a receiving state to deny a mandatory transfer of an offender under the compact who meets the requirements of such a transfer under Rule 3.101. It is well settled that Rule 3.101 affirms the sole discretion of the sending state to transfer supervision of an offender who meets the criteria set forth in the rule. This rule also prevents the receiving state from attempting to unilaterally add conditions in order to stifle the transfer of offenders it deems undesirable or for whom it is attempting to "shift" to the sending state some financial or other obligation related to the offender's supervision. *See Doe v. Ward, 124 F. Supp.2d 900 (W.D. Pa. 2000); also ICAOS v. Tennessee Bd. of Probation and Parole, No. 04-526 KSF (E.D. Ky. 2005).*

Under ICAOS Rule 4.103, the addition of a special condition which the receiving state is unable to enforce only requires that the receiving state notify the sending state of its inability to enforce a special condition at the time the transfer request is made [ICAOS Rule 4.103 (d)]. The referenced section of the ICAOS Benchbook must be interpreted in accord with the requirements of these rules. No provision of

the current rules requires the sending state to change the terms of the offender's sentence because the receiving state has provided notice that it is unable to enforce the special condition. Neither does ICAOS Rule 4.103 (d) authorize a sending state to enforce a special condition in the receiving state once it has been notified that the receiving state is unable to enforce a special condition imposed in the sending state.

In response to *Issue #3*:

It is unquestionably the case that the provisions of the Compact and its rules, by virtue of congressional consent under Article I, Section 10, Clause 3 of the federal Constitution have been 'transformed into federal law' and supercede conflicting state laws. *See Cuyler v. Adams, 449 U.S. 433, 442 (1981); also Doe v. Pennsylvania Board of Probation and Parole, 513 F.3d 95, 103 (2008)*. However the issue framed in the details provided by Massachusetts is actually a question of the interpretation of the legal effect of a sentence imposed under a Massachusetts statute on an offender who has transferred to another state under the compact in cases where the receiving state is unable to enforce the special condition under Rule 4.103.

Based on the analysis of *Issue 2*, as explained above, under the provisions of ICAOS Rule 4.103, in the event that the receiving state is unable to enforce the special condition, the sending state continues to have the discretion to transfer an offender under the compact who meets the requirements of ICAOS Rule 3.101 but does so with the understanding that the sending state will be allowing the transfer with the knowledge that the special condition will not be enforced.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 2-2008
Issued: 2008-07-07

Requested by: Texas
At Issue: Authority to Issue Travel Permits

Authority of judges and probation or parole officers to permit certain offenders to travel outside of Texas who, by reason of the type of crime committed or the duration of the travel, are not eligible for transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision ("ICAOS") or ICAOS administrative rules. Whether offenders whose offenses otherwise qualify for transfer of supervision under the provisions of ICAOS rules may be permitted to travel out of state for a period of forty-five (45) days or less?

Advisory Opinion 2-2008

Issued by: Harry E. Hageman, Executive Director & Richard L. Masters, Legal Counsel

Background

The State of Texas has requested an advisory opinion pursuant to Rule 6.101 concerning the authority of its judges and probation or parole officers to permit certain offenders to travel outside of Texas who, by reason of the type of crime committed or the duration of the travel, are not eligible for transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision ("ICAOS") or ICAOS administrative rules. Further, Texas asks whether its offenders whose offenses otherwise qualify for transfer of supervision under the provisions of ICAOS rules may be permitted to travel out of state for a period of forty-five (45) days or less?

In its request for an opinion Texas provides the following context in which this question arises:

> *1. Texas judges and probation officers are hesitant to allow misdemeanor offenders who apparently do not fall under the Interstate Compact misdemeanor rule, Rule 2.105, to leave the State of Texas after these offenders are placed under supervision. Because Rule 2.105 has been interpreted to make only those offenders who have committed four specified types of misdemeanor offenses eligible for transfer under the Interstate Compact; and because Rule 2.110 (b) states that "[a]n offender who is not eligible for transfer under this Compact is not subject to these rules and remains subject to the laws and regulations of the state responsible for the offender's supervision," a large class of misdemeanor offenders is created whose departure from Texas is the subject of this request as to whether it is lawfully authorized under this interpretation of the Rules.*
>
> *Texas points out that if these offenders are not otherwise permitted to travel such a result appears to contradict the intent of the rule because these misdemeanor offenders were excluded from eligibility for transfer under the misdemeanor rule for the reason that their offenses were considered to be less of a threat to public safety than the four categories of offense that are enumerated in Rule 2.105.*
>
> *If offenders who are not subject to the provisions of the ICAOS rules are not permitted to travel under any circumstances, the result can be that ''less serious" offenders, e.g., first-time D.W.I.s or bad-check writers, being placed in the anomalous position of being subjected to a more restrictive limitation of being unable to return to their home states or*

relocate during the term of their supervision than those offenders who have committed offenses more frequently or severely, e.g., second- or third-time D.W.I.s or domestic abusers.

If the ICAOS rules are construed to prohibit such offenders from travel outside Texas judges must choose between keeping the offenders in Texas for the length of their supervision or assessing a fine rather than placing the offenders under supervision, although the judge may feel supervision is warranted and is in the best interests of justice; or letting the excluded misdemeanants go to another state and risking potential personal liability for criminal acts of such offenders.

2. Similarly, Texas judges and probation officers are reluctant to issue travel permits to offenders who are not relocating but simply leaving the state of Texas for routine business travel, vacations, visits to family, medical appointments, and other such out-of-state travel normally undertaken in the activities of everyday life. Texas judges and probation officers clearly understand their obligation under the Compact to begin transfer proceedings on offenders who plan to leave Texas for more than 45 days. But neither the Compact nor its rules addresses out-of-state travel of offenders for 45 days or less except for those in victim-sensitive cases. There has been an increasing concern by judges and probation officers who issue such travel permits as to whether such travel is prohibited under the provisions of the Interstate Compact or its rules.

Applicable Rules and Statutes

The regulations which are implicated in Texas' request include the following:

Rule 1.101 "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 provisions of the Interstate Compact for Adult Offender Supervision.

Rule 1.101 "Relocate" means to remain in another state for more than 45 consecutive days in any 12 month period.

Rule 1.101 "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.

Rule 2.105 Misdemeanants

(a) A misdemeanor offender whose sentence includes one year or more of supervision shall be eligible for transfer, provided that all other criteria for transfer, as specified in Rule 3.101, have been satisfied; and the instant offense includes one or more of the following –

(1) an offense in which a person has incurred direct or threatened physical or psychological harm;

(2) an offense that involves the use or possession of a firearm;

(3) a second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol;

(4) a sexual offense that requires the offender to register as a sex offender in the sending state.

Rule 2.110 (b) "An offender who is not eligible for transfer under this Compact is not subject to these rules and remains subject to the laws and regulations of the state responsible for the offender's supervision."

Rule 3.101 Mandatory transfer of supervision

At the discretion of the sending state, an offender shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the offender:

(a) has more than 90 days or an indefinite period of supervision remaining at the time the sending state transmits the transfer request; and

(b) has a valid plan of supervision; and

(c) is in substantial compliance with the terms of supervision in the sending state; and

(d) is a resident of the receiving state; or

(e)

(1) has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and

(2) can obtain employment in the receiving state or has means of support.

Analysis and Conclusion

Question 1: Whether a Texas offender who has committed an offense not covered by the terms of ICAOS or its rules and who is not subject to the provisions of ICAOS may otherwise be permitted to travel to another state?

Based upon the provisions of the ICAOS rules, offenders not subject to ICAOS may, depending on the terms and conditions of their sentences, be free to move across state lines without prior approval from the receiving state and neither judges nor probation officers are prohibited by ICAOS from allowing such offenders to travel from Texas to another state.

It is not the intent of the ICAOS to dictate judicial sentencing or place restrictions on judicial discretion relative to sentencing. As evidenced by the above referenced ICAOS rules there are no provisions telling judges what sentences to impose in particular cases. Neither does the ICAOS alter individual state sentencing laws although there may be an impact on how those laws affect transfer decisions once the provisions of the ICAOS are determined to apply. See, e.g., Advisory Opinion 6-2005 (deferred

sentences); also Advisory Opinion 7-2006 (second offense DUI).

Equally important is the clear expression of intent under the ICAOS rules that the provisions of the ICAOS are only activated when the Court determines that transfer of supervision of an offender to another state is warranted under the facts and circumstances of the particular case and the offense for which the offender has been convicted or to which a guilty plea has been accepted is an offense which is covered by the provisions of the ICAOS rules and the offender is eligible for transfer under the provisions of Rule 3.101. It should also be pointed out that as a general proposition, even if the offender's supervision is eligible to be transferred under the provisions of the ICAOS rules, there is no constitutionally guaranteed right of a convicted person to interstate travel or being supervised in another state. See Williams v. Wisconsin, 336 F.3d 576 (7th Cir. 2003); Jones v. Helms, 452 U.S. 412, 419-20 (1981); O'Neal v. Coleman, 2006 U.S. Dist. Ct. LEXIS 40702 (W.D. Wis., June 16, 2006) (offender has no 'right' to have supervision transferred pursuant to ICAOS).

To initially qualify for transfer of supervision under the ICAOS, the offender must (1) be subject to some form of community supervision, including supervision by courts, paroling authorities, probation authorities, treatment authorities, or any person or agency acting in such capacity or under contract to provide supervision services [See ICAOS Rule 1.101 'supervision,' and 'offender'], and (2) have committed a covered offense as defined by ICAOS rules [See ICAOS Rules 2.105 and 3.101 (a)].

As previously noted, even if the ICAOS is 'triggered' the decision to transfer supervision of an offender is purely within the discretion of authorities in the sending state. Rule 3.101 neither creates nor grants to an offender a constitutionally protected right to travel. State judges have inherent discretionary authority to determine whether an offender whom they have sentenced should be permitted to travel outside the state where sentence is imposed. Once such discretion is exercised to allow such travel the provisions of ICAOS regulate the process by which covered offenders may relocate. However, an offender who is not subject to the ICAOS while not eligible to have supervision transferred to another state, absent a term or condition of the applicable sentencing order, is also not restricted from traveling across state lines. See Sanchez v. N.J. State Parole Board, 845 A.2d 687, 692 (N.J. Super. Ct. App. Div. 2004) ('New York cannot have it both ways. If CSL defendants do not fall within the purview of ICAOS, then New Jersey has no obligation to prevent them from moving to New York.'). [1]

Question 2: Whether Texas offenders whose offenses otherwise qualify for transfer of supervision under the provisions of ICAOS rules may be permitted to travel out of state for a period of forty-five (45) days or less?

The provisions of Rule 2.110 (a) limit the applicability of the ICAOS rules regarding transfer of supervision to eligible offenders who 'relocate' to another state. The term 'relocate' is defined by ICAOS Rule 1.101 as remaining in another state 'for more than 45 consecutive days in any 12 month period.' Based on this definition an offender who is not relocating but simply leaving the state of Texas (for a period not exceeding 45 consecutive days) for routine business travel, vacations, visits to family, medical appointments, and other such out-of-state travel normally undertaken in the activities of everyday life is not subject to the ICAOS rules concerning a transfer of supervision even if they are otherwise eligible to transfer supervision under the Compact.

This interpretation is further supported by examining the legislative history of the definition of the term "relocate" as adopted by the Commission in 2005. In its' recorded deliberations the Commission debated the time period beyond which an offender's presence in another state requires an application for transfer to that state. Thirty, fortyfive and sixty days were debated, and the Commission decided that an offender's absence from the state of supervision for a total of 45 days or more in a 12-month period triggered the application for transfer requirement. Any absence for less than 45 days was travel of the sort described above and was implicitly sanctioned by the Commission as being within the existing discretion of the states to decide whether to allow such travel. Thus, the issue of such travel permits was considered within the context of the definition of "relocate" , and the Commission has not chosen to take further action to regulate this type of travel with the exception of notification requirements in

victim sensitive cases as provided in ICAOS Rules 3.108 (b)(1)(E) and 3.108-1.

Caution should be exercised in situations where the offender is eligible for transfer of supervision under ICAOS, intends to relocate, and has applied for a transfer of supervision to another state because the issuance of a travel permit for such an offender, in the absence of expedited reporting instructions under Rule 3.106, is sufficient grounds for rejection of the application for transfer of supervision under ICAOS Rule 2.110 until such an offender has returned to the sending state.

Summary

In summary, with regard to question 1, offenders not subject to ICAOS may, depending on the terms and conditions of their sentences, be permitted to move across state lines without prior approval from the receiving state and neither judges nor probation officers are prohibited by ICAOS from allowing such offenders to travel from Texas to another state.

With respect to question 2, an offender who is not relocating but simply leaving the State of Texas (for a period not exceeding 45 consecutive days) for routine business travel, vacations, visits to family, medical appointments, and other such out-of-state travel normally undertaken in the activities of everyday life is not subject to the ICAOS rules concerning a transfer of supervision, other than notification requirements in victim sensitive cases, even if otherwise eligible to transfer supervision under the Compact. Therefore such an offender may be permitted to travel and both courts and probation and parole officers are authorized to issue travel permits to such offenders.

[1] This decision is cited for the proposition that if an offender is not subject to the provisions of the Compact or rules at the time the travel occurs, based on the nature of the offense and the terms and conditions of the sentence imposed, such travel may be permitted. Subsequent to this decision it was determined that CSL offenders are subject to ICAOS. See Advisory Opinion 9-2004

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 3-2008
Issued: 2008-11-19
Revised: 2026-02-04

Requested by: Massachusetts
At Issue: Whether a receiving state may prohibit a compact-supervised sex offender from traveling out of state when such restrictions apply to individuals sentenced within the receiving state, and whether the sentencing court in the sending state retains authority to authorize such travel once supervision has transferred under ICAOS.

Advisory Opinion 3-2008

Background

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:

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 sex offender's attorney then appeared before the sentencing court in the sending state to request permission for the individual to travel. The court thereafter authorized the individual to travel outside of Massachusetts for work purposes.

MPS believes that under ICAOS, once supervision is transferred to a receiving state, the receiving state's supervision authority has sole responsibility for making decisions as to a supervised individual's supervision, including out-of-state travel, and that the sentencing court in the sending state has no authority to grant 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:

1. Whether a receiving state's compact administrator may prohibit a supervised individual, 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?
2. Whether the sentencing court in the sending state retains the authority, in light of ICAOS and its attendant rules and regulations, to authorize out-of-state travel for work purposes once his or her supervision has been transferred to another state pursuant to ICAOS?

Applicable Rules

Rule 4.101 Manner and degree of supervision in receiving state

> *A receiving state shall supervise individuals transferred under the interstate compact in a manner consistent with the supervision and risk level of other similarly sentenced*

individuals sentenced in the receiving state.

Analysis

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 supervised individuals may be prohibited from travel 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 supervised individual "**consistent with the supervision and risk level of other similarly sentenced individuals sentenced in the receiving state"** then compact supervised individuals should be subject to the same exception as individuals 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 supervised individuals is determined by the receiving state, the sentencing court in the sending state does not surrender its' jurisdiction over an individual 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 a supervised individual at any time, subject to the exceptions noted in that rule. As pointed out in the *ICAOS Bench Book for Judges and Court Personnel* "whether the sending state continues to exercise jurisdiction over a supervised individual or has relinquished or forfeited that jurisdiction is a matter determined solely by the sending state. Accordingly, the sending state court continues to exercise some authority over a compact supervised individual for the duration of the period of supervision.

Conclusion

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 a supervised individual seeks and is granted permission for such travel by the sentencing court in Massachusetts, then the same exception should apply to such a supervised individual transferred to Massachusetts pursuant to ICAOS vis-à-vis the sentencing court in the sending state.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 1-2009
Issued: 2009-12-22

Requested by: East Region
At Issue: Clarification of Rule 3.105 - transfer request for offenders incarcerated at the time the request is submitted.

Whether a sending state may request that a receiving state investigate a request to transfer supervision under the compact prior to the offender's release from incarceration when the offender is subject to a "split sentence" of jail or prison time and release to probation supervision, or must wait until the offender is released to supervision in order to make such a request.

Advisory Opinion 1-2009

Issued by: Harry E. Hageman, Executive Director & Richard L. Masters, Legal Counsel

Background

Pursuant to Commission Rule 6.101(c) the States of the East Region of the Interstate Commission for Adult Offender Supervision have requested an advisory opinion regarding the requirements of the Compact and ICAOS Rules on the following issue: Clarification of Rule 3.105 - transfer request for offenders incarcerated at the time the request is submitted.

Applicable Rules and Statutes

Rule 1.101 in relevant part provides:

"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 provisions of the Interstate Compact for Adult Offender Supervision.

Rule 3.102 provides as follows:

Rule 3.102 Submission of transfer request to a receiving state

> *(a) Subject to the exceptions in Rule 3.103 and 3.106, a sending state seeking to transfer supervision of an offender to another state shall submit a completed transfer request with all required information to the receiving state prior to allowing the offender to leave the sending state.*
>
> *(b) Subject to the exceptions in Rule 3.103 and 3.106, the sending state shall not allow the offender to travel to the receiving state until the receiving state has replied to the transfer request.*

Rule 3.105 provides as follows:

Rule 3.105, Request for transfer of a paroling offender

> *(a) A sending state shall submit a completed request for transfer of a paroling offender to a receiving state no earlier than 120 days prior to the offender's planned prison release date.*
>
> *(b) A sending state shall notify a receiving state of the offender's date of release from prison or if recommendation for parole of the offender has been withdrawn or denied*
>
> *(c)*
>
> > *(1) A receiving state may withdraw its acceptance of the transfer request if the offender does not report to the receiving state by the fifth calendar day following the offender's intended date of departure from the sending state.*
> >
> > *(2) A receiving state that withdraws its acceptance under Rule 3.105(c) (1) shall immediately notify the sending state.*
> >
> > *(3) Following withdrawal of the receiving state's acceptance, a sending state must resubmit a request for transfer of supervision of a paroling offender in the same manner as required in Rule 3.105 (a).*

Analysis and Conclusion

Questions which arise concerning the proper construction of statutes or administrative rules not only require recourse to the 'plain meaning' of the words used, but also require that the provisions of a particular statute or regulation be interpreted in harmony with other statutory or regulatory provisions governing the conduct in question. *"Plain meaning is examined by looking at the language and design of the statute as a whole." See Lockhart v. Napolitano, 573 F. 3d 251 (6th Cir. 2009).* Moreover such provisions must be interpreted consistent with the intent of the legislative body which adopted the provisions in question and *"interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purposes are available." See Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 575 (1982).*

Although the predecessor compact to the Interstate Compact for Adult Offender Supervision referred to both parolees and probationers, neither term appears in the Act by which the compact is now known and has been enacted by all fifty (50) states. It is also significant that neither the term '*Probation*' nor '*Parole*' is defined in either the compact statute or the ICAOS rules.

Instead both the provisions of the current compact and the ICAOS rules define the term '*offender*' which definition subsumes within it both offenders who are released to the community on *probation* under the jurisdiction of courts as well as those who are released to the community on *parole* and who are

required to request transfer of supervision under the provisions of the compact. Similarly, the text of the compact and rules, including those referred to in this opinion, generally do not distinguish between offenders on probation and those on parole.

While the provisions of Rule 3.105, on which the Commonwealth of Massachusetts purports to rely, refer to a 'paroling' offender and limit the time frame in advance of an offender's release date within which a sending state may submit a completed request for transfer, nothing in the language of this rule or any other ICAOS rules prohibits a transfer request from being made for an offender who is released from incarceration and subsequently placed under probation supervision. Regardless of whether an offender is being released to parole supervision or probation supervision it is clear that the intent of the ICAOS rules, like the compact itself, is to promote public safety and offender rehabilitation. As recently determined in *Doe v. Pennsylvania Board of Probation and Parole, 513 F.3d 95 (3rd Cir. 2008) "The parties to this Compact have set forth their intentions quite clearly: It is the purpose of this compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compacting states: 'to provide the framework for the promotion of public safety and protection of the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits, and obligations of the compact among the compacting states.' " Doe supra. @ p.106.*

The proffered interpretation by the Commonwealth of Massachusetts could inevitably lead to situations in which the delay in processing a sending state's request for an investigation of a transfer of an offender serving a 'split sentence' until after the offender's release places the public at risk because the offender will be released for a period which could potentially last for several months in the sending state where there is no housing, no support system and no employment. It would be an 'absurd' result to interpret this rule in a manner which endangers public safety rather than promoting it and is inimical to the offender's rehabilitation.

Summary

Accordingly, based on the foregoing analysis and consistent with the clear intent of the compact and the ICAOS rules as well as the language and design of the compact and the rules, a sending state may request that a receiving state investigate a request to transfer supervision under the compact prior to the offender's release from incarceration when the offender is subject to a "split sentence" of jail or prison time and release to probation supervision.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 1-2010
Issued: 2010-03-05

Requested by: Arkansas
At Issue: Whether a receiving state may require all documents concerning the offender which it considers relevant and the authority to return an offender whom it determines can no longer be safely supervised in that state as conditions precedent to accepting a transfer of supervision of an offender under the compact.

Advisory Opinion 1-2010

Issued by: Harry E. Hageman, Executive Director & Richard L. Masters, Legal Counsel

Background

The State of Arkansas reported that the State of Washington denied recent transfer requests for three (3) Arkansas offenders eligible for transfer under Rule 3.101 of ICAOS Rules. Washington premised the denial of each of these transfer requests on written grounds, which have been provided to Arkansas that state as follows:

"In the interest of community safety Washington cannot accept the transfer of this Offender to Washington for supervision unless and until the following conditions are met and the following assurances are given: 1) That Arkansas provides all relevant documents concerning the offender's known criminal history in Arkansas including all judgments and sentences, statements of Defendant on Plea of Guilty and any pre-sentence investigations; and 2) A commitment that Washington will be vested with the authority to decide when an offender transferred to Washington for supervision can no longer be safely supervised in the community and that the offender needs to be returned to Arkansas."

Based upon the above facts and pursuant to Commission Rule 6.101(c), the State of Arkansas requested an advisory opinion regarding the requirements of the Compact and ICAOS Rules on the following issue:

Applicable Rules

Rule 3.101 provides:

"Rule 3.101 Mandatory transfer of supervision - At the discretion of the sending state, an offender shall be eligible for transfer of supervision in a receiving state under the compact, and the receiving state shall accept transfer, if the offender:

> *(a) has more than 90 days or an indefinite period of supervision remaining at the time the sending state transmits the transfer request; and*
>
> *(b) Has a valid plan of supervision; and*

(c) Is in substantial compliance with the terms of supervision in the sending state; and

(d) Is a resident of the receiving state; or

(e)

(1) has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and

(2) can obtain employment in the receiving state or has means of support."

Rule 3.107[1] provides:

"Rule 3.107 Transfer Request

(a) A transfer request for an offender shall be transmitted through the electronic information system authorized by the commission and shall contain –

(1) transfer request form;

(2) instant offense in sufficient detail to describe the type and severity of offense and whether the charge has been reduced at the time of imposition of sentence;

(3) photograph of offender;

(4) conditions of supervision;

(5) any orders restricting the offender's contact with victims or any other person;

(6) any known orders protecting the offender from contact with any other person;

(7) information as to whether the offender is subject to sex offender registry requirements in the sending state along with supportive documents;

(8) pre-sentence investigation report, if available;

(9) supervision history, if available;

(10) information relating to any court-ordered financial obligations, including but not limited to, fines, court costs, restitution, and family support; the balance that is owed by the offender on each; and the address of the office to which payment must be made.

(b) The original signed Offender Application for Interstate Compact Transfer shall be maintained in the sending state. A copy of the signed Offender Application for Interstate Compact Transfer shall be attached to the transfer request.

(c) Additional documents, such as the Judgment and Commitment, and any other information may be requested from the sending state following acceptance of the offender. The sending state shall provide the documents if available."

Rule 5.101[2] in relevant part provides:

"Rule 5.101 Retaking by the sending state

(a) Except as required in Rule 5.102 and 5.103, at its sole discretion, a sending state may retake an offender, unless the offender has been charged with a subsequent criminal offense in the receiving state."

Rule 5.103[3] in relevant part provides:

"Rule 5.103 Mandatory retaking for violation of conditions of supervision

(a) Upon a request by the receiving state and a showing that the offender has committed three or more significant violations arising from separate incidents that establish a pattern of non-compliance of the conditions of supervision, a sending state shall retake or order the return of an offender from the receiving state or a subsequent receiving state."

Analysis & Conclusion

It appears to be undisputed that the three (3) offenders, whose supervision Arkansas sought to transfer to the State of Washington, were otherwise eligible for mandatory transfer under the provisions of ICAOS Rule 3.101. In addition, the information required to be submitted with the transfer requests pursuant to ICAOS Rule 3.107 appears to have been provided.

Notwithstanding these circumstances, the State of Washington denied all three (3) of these requests for transfer on the basis that additional information concerning the criminal history of these offenders, some of which is not required by Rule 3.107 to be furnished, has not been provided and that the State of Arkansas refuses to agree that Washington will be vested with the authority to unilaterally decide when any of these offenders transferred can no longer be safely supervised in the community and that the offender needs to be returned to Arkansas, which appears to be in direct contradiction of ICAOS Rule 5.103 (a), which requires a showing of a minimum of three (3) significant violations establishing a pattern of non-compliance before retaking by the sending state is required.

It is well settled that as a congressionally approved interstate compact, the provisions of the ICAOS and its duly authorized rules enjoy the status of federal law. *See Cuyler v. Adams*, 449 U.S. 433, 440 (1981); *Carchman v. Nash*, 473 U.S. 716, 719 (1985) ("The agreement is a congressionally sanctioned interstate compact within the Compact Clause and thus is a federal law subject to federal constructions." (citation omitted)); *see also Alabama v. Bozeman*, 533 U.S. 146 (2001) and *Reed v. Farley*, 512 U.S. 339 (1994); and *Doe v. Pennsylvania Board of Probation & Parole*, 513 F.3rd 95, 103 (3rd Cir. 2008). As such, after a sending state grants permission to an offender meeting the mandatory acceptance criteria to relocate, the receiving state must assume supervision over the offender and treat the offender in the same manner as in- state offenders. See *Doe, supra*. at p.108.

While a receiving state is permitted, at the time of acceptance, to impose special conditions as set forth in ICAOS Rule 4.103[4] (a), it cannot do so, pre-emptively as a means of avoiding its general obligations under the compact prior to acceptance in order to prevent a transfer of supervision. See *ICAOS v. Tennessee Board of Probation and Parole*, No. 04-526 KSF (E.D. Ky. 2005).

The duly promulgated rules are equally binding upon the parties to the compact. One of the axioms of modern government is the ability of a state legislature to delegate to an administrative body the power to make rules and decide particular cases. This delegation of authority extends to the creation of interstate commissions through the vehicle of an interstate compact. *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 30 (1951). It has been held that the states may validly agree by interstate compact with other states to delegate to interstate commissions or agencies legislative and administrative powers and duties. *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938); Scott v. Virginia, 676 S.E.2d 343, 346 (Va. App. 2009); *Dutton v. Tawes*, 171 A.2d 688 (Md. 1961); *Application of Waterfront Commission of New York Harbor*, 120 A.2d 504, 509 (N.J. Super. 1956). Thus, the provisions of Rule 3.101, 3.107 and 5.101 have been legally authorized and approved by the Commission and neither the State of Washington nor any other state, which is a party to the contractually binding provisions of the compact, is permitted to unilaterally modify these requirements.

In this case, however, the State of Washington appears to have unlawfully done so by imposing additional requirements on transfers of supervision that any other state from which an offender seeks to transfer to Washington must provide all documents concerning the offender, which it considers relevant regardless of what may be required under Rule 3.107 and the authority to return an offender, whom it determines can no longer be safely supervised in that state in contravention of Rule 5.101.

By entering into a compact, the member states contractually agree on certain principles and rules. Depending on the terms of the compact, a state may effectively cede a portion of its individual sovereignty over the subject of the agreement, as is the case with the Interstate Compact for Adult Offender Supervision. Once entered, the terms of the compact as well as any rules and regulations authorized by the compact supersede substantive state laws that may be in conflict. See *West Virginia*

ex rel. Dyer, supra at 29. This applies to prior law (See *Hinderlider, infra*, 304 U.S. at 106) and subsequent statutes of the signatory states. See *Green v. Biddle*, 21 U.S. (8 Wheat.) 1, 92 (1823).

In *Dyer*, the Court also made clear that an interstate compact cannot be "… given final meaning by an organ of one of the contracting states." Member states may not take unilateral actions, such as the adoption of conflicting legislation or the issuance of executive orders or court rules that violate the terms of a compact. See *Northeast Bancorp v. Bd. of Governors of Fed. Reserve System*, 472 U.S. 159, 175 (1985). See *Wash. Metro. Area Transit Auth. v. Once Parcel of Land*, 706 F.2d 1312, 1318 (4th Cir. 1983); *Kansas City Area Transp. Auth. v. Missouri*, 640 F.2d 173, 174 (8th Cir. 1981). See also *McComb v. Wambaugh*, 934 F. 2d 474, 479 (3rd Cir. 1991); *Seattle Master Builders Ass'n v. Pacific Northwest Electric Power & Conservation Planning Council*, 786 F.2d 1359, 1371 (9th Cir. 1986); *Rao v. Port Authority of New York*, 122 F. Supp. 595 (S.D.N.Y. 1954), aff'd 222 F.2d 362 (2nd Cir. 1955); *Hellmuth & Associates, Inc. v. Washington Metropolitan Area Transit Authority*, 414 F. Supp. 408, (Md. 1976).

The legal standing of compacts as contracts and instruments of national law applicable to the member states annuls any state action in conflict with the compact's terms and conditions. Therefore, once adopted, the only means available to change the substance of a compact (and the obligations it imposes on a member state) are through withdrawal and renegotiation of its terms, or through an amendment to the compact (or in this case, the administrative rules) adopted by all member states in essentially the same form. The contractual nature of the compact controls over any unilateral action by a state; no state being allowed to adopt any laws "impairing the obligation of contracts," including a contract adopted by state legislatures pursuant to the Compact Clause. See U.S. Const. art. I, § 10, cl. 1 ("No state shall pass any bill of attainder, ex post facto law or law impairing the obligation of contracts …"); see also *West Virginia ex rel. Dyer, supra* at 33; *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 101 Colo. 73 (1937), *rev'd* 304 U.S. 92 (1938).

In a situation similar to that presented here, the Court in *Doe v. Ward*,124 F. Supp.2d 900 (W.D. Pa. 2000) was confronted with a case in which the State of Pennsylvania attempted to add to the mandatory acceptance criteria of the predecessor compact (Interstate Compact on Parole and Probation), based upon a Pennsylvania statute pertaining to sex offender notification. The court held that the plain language of the compact provisions in this regard prohibited the Pennsylvania Board of Probation and Parole from rejecting the transfer from other states of offenders who met the compact's mandatory acceptance criteria and that the **state had no authority to add an "extraneous condition" as a condition of transfer.** See *Doe, supra* at 914-915. See also *McComb v. Wambaugh*, 934 F.2d 474, 479 (3rd Cir. 1991).

In summary, based upon the terms of the compact, the above referenced rules and the legal authorities cited herein, neither the State of Washington nor any other ICAOS member state may refuse otherwise valid mandatory transfers of supervision under the compact on the basis that additional information concerning the criminal history of these offenders, not required by Rule 3.107 to be furnished, has not been provided or that the State of Washington will be vested with the authority to unilaterally decide when any of these offenders transferred can no longer be safely supervised in the community and that the offender needs to be returned to the sending state in contravention of Rule 5. 103 (a), which requires a showing of a minimum of three (3) significant violations establishing a pattern of non-compliance before retaking by the sending state is required.

Footnotes

[1] Since the drafting of this advisory opinion, the Commission has approved five amendments to this rule. In 2010, 2011, 2013, 2017 and 2019 the Commission modified this rule, which now includes known

gang affiliation, mental health and prison discipline history if available and not prohibited by law. Additional time frames have also been added for providing the documentation required by the rule.

[2] On October 9, 2019, the Commission amended Rule 5.101 to include notification to the receiving state, return reporting instructions and the issuance of a warrant if an offender does not return as ordered.

[3] On September 14, 2016, the Commission amended Rule 5.103 changing the title of the rule to "Behavior requiring retaking" and eliminating the three significant violation requirement for mandatory retaking in lieu of documentation that the offender's behavior indicates the need for retaking.

[4] On September 14, 2016, the Commission approved an amendment to Rule 4.103 removing the word "special" before conditions as all conditions should be considered equally. Language was also added to this rule to better clarify a receiving state's ability to impose and enforce conditions.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 2-2010
Issued: 2010-07-15

Requested by: Arizona
At 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.

Advisory Opinion 2-2010

Issued by: Harry E. Hageman, Executive Director and Richard L. Masters, Legal Counsel

Background:

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: Does rule 4.112 (a)(1) permit closing interest in a supervision case upon modification of the sentencing order?

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 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.

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 '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.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 3-2010
Issued: 2010-07-22
Revised: 2019-05-15

Requested by: Missouri
At Issue: Whether a California statute that classifies certain eligible California parolees as not subject to active supervision or revocation of parole excludes such individuals from the jurisdiction of the Interstate Compact for Adult Offender Supervision.

Advisory Opinion 3-2010

Revision (2nd revision) February 4, 2026

Issued by: Harry E. Hageman, Executive Director & Richard L. Masters, Legal Counsel

Background

Pursuant to Commission Rule 6.101(c) the State of Missouri has requested an advisory opinion regarding the requirements of the Compact and ICAOS Rules with respect to the following: On January 25, 2010, the provisions of a new California statute (California Penal Code § 3000.03) became effective. This statute placed eligible California parolees onto Non-Revocable Parole ('NRP') status.

Individuals who qualify for classification as NRP status are not subject to active supervision by California parole officers and "shall not be subject to parole revocation or the placement of a parole hold." NRP parolees are only subject to search by any law enforcement officer at any time until discharged. Cal Pen Code § 3000.03 applies to all California inmates and parolees under the jurisdiction of the California Department of Corrections and Rehabilitation (CDCR), regardless of their conviction date with the following exceptions:

- sex offenders;
- individuals convicted of serious or violent, or sexually violent felonies (serious felonies are not defined except by reference to another statute);
- gang members;
- individuals determined to be at high risk to re-offend;
- individuals with serious disciplinary offenses while incarcerated; or
- individuals who refuse to sign written notifications of parole requirements or conditions.

Accordingly, the State of California asserts that NRP parolees currently under compact supervision in other states or who are seeking a transfer of supervision, from California, to another state under the compact no longer meet the definition of supervision and are therefore no longer subject to transfer under the compact provisions.

Applicable Rules and Statutes

Rule 1.101 provides:

> '*Supervision*' *means an "offender" defined by Article II of the Interstate Compact for Adult Offender Supervision 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 Compact*

'Supervision' means the oversight exercised by authorities of a sending or receiving state over a supervised individual for a period of time determined by a court or releasing authority, during which time the supervised individual is required to report to or be monitored by supervising authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the supervised individual at the time of release to the community or during the period of supervision in the community.

Analysis

Under the current definition of supervision set forth in Rule 1.101, oversight exercised over the *supervised* individual required to establish jurisdiction of the compact must include two components:

1. "*. . . the supervised individual is required to report to or be monitored by supervising authorities*"*; and*
2. *the supervised individual is required* "*to comply with regulations and conditions, other than monetary conditions, imposed on the supervised individual at the time of release to the community or during the period of supervision in the community.*"

Cal Pen Code § 3000.03 clearly meets the 2nd of these components because the individual is subject to search by any law enforcement officer at any time until discharged; however, the statute eliminates the need to report to supervising authorities. It is doubtful that the 'subject to search' requirement of the statute is sufficient to meet Rule 1.101's definition of supervision that requires monitoring by supervising authorities.

Because monitored is not defined in the provisions of the compact or ICAOS Rules, the accepted maxims of statutory construction require interpretation of such terms according to their common meaning or usage as other words in the English language. See *Diamond v. Diehr, 450 U.S. 175, 182 (1981) ('In all statutory construction,' "[u]nless otherwise defined, "words will be interpreted as taking their ordinary, contemporary, common meaning.") Id at p.182.* In this context, the dictionary's definition of "monitor" means "to oversee, supervise, or regulate, to watch closely for purposes of control, surveillance, etc., keep track of;" *(Random House Dictionary of the English Language, 2nd Ed. 1987).* Through common use, the term *monitor* anticipates active and regular oversight and 'keeping track of' the individual '*monitored by supervising authorities*' under the terms of the compact.

The requirement imposed by Cal Pen Code § 3000.03, that NRP parolees are subject to a random and occasional search, if at all, does not appear consistent with the phrase 'monitored by supervising authorities' as used in the ICAOS Rules. For that reason, a California parolee who, as a result of the type of offense committed, qualifies for classification as an NRP parolee, is not considered under supervision as defined by ICAOS Rule 1.101 and is therefore not subject to transfer under the provisions of the Compact.

However, since the statute applies to all California inmates and parolees under the jurisdiction of the CDCR, in a case in which an individual is seeking transfer of supervision to another state and the Court determines that supervision is warranted, it is still possible for a California court to order direct reporting to the Court or completion of behavioral modification/treatment programs with direct result submission to the Court in lieu of the CDCR.

The potential imposition of such court-ordered terms for an individual seeking transfer to another state can create sufficient basis for supervision under the terms of the compact and the rules, notwithstanding the fact that the California law does not permit the individual's supervision by the CDCR.

Conclusion

ICAOS Rule 1.101 requires both active monitoring by supervising authorities and compliance with non-monetary conditions to establish supervision under the Compact. While Cal. Penal Code § 3000.03 satisfies the condition-compliance component through its search requirement, it eliminates reporting and does not provide the active, regular oversight contemplated by the term “monitored” as commonly understood. As a result, California NRP parolees subject only to random or occasional searches are not considered under supervision for purposes of the Compact and are not eligible for transfer.

However, where a court determines that supervision is necessary, court-ordered reporting or treatment requirements—directly overseen by the court rather than CDCR—may establish sufficient supervision to trigger Compact applicability, despite the statutory limits on CDCR supervision.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 4-2010
Issued: 2010-07-15
Revised: 2019-05-15

Requested by: West Region
At Issue: What is the legal effect on Compact eligible cases when a Washington statute prohibits the Department of Corrections from supervising individuals sentenced to community custody, community placement, or community supervision?

Advisory Opinion 4-2010

Revised (2nd revision) Feb 4, 2026

Issued by: Harry E. Hageman, Executive Director & Richard L. Masters, Legal Counsel

Background

In 2009, Washington enacted a statute limiting Department of Corrections (DOC) community supervision to individuals convicted of certain felony and misdemeanor crimes. To prioritize resources required for the highest risk supervised individuals, the department evaluates offenses and supervision requirements using evidenced-based practices and a static risk assessment tool developed by the Washington State Institute for Public Policy (WSIPP). Under the provisions of this statute, the DOC only has authority to supervise individuals either convicted of a specific crime or with an assessed high risk to re-offend.

Under the terms of the statute, and pursuant to ICAOS Rule 4.101, Washington matches the out-of-state conviction to a similar Washington criminal offense. In conjunction with the criminal history and risk level of the individual, Washington then determines the level of supervision required for a transferring supervised individual.

Individuals on supervision for the following similar convictions have regular contact with a Washington community corrections officer:

- Murder, First and Second Degree;
- Homicide by Abuse;
- Manslaughter First Degree;
- Assault First Degree;
- Kidnapping in the First Degree;
- Rape in the First Degree;
- Assault of a Child in the First Degree;
- An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies;
- Federal or out of state conviction for an offense that under the laws of Washington would be a felony as classified above; and/or
- Sex offense(s).

The Washington DOC also indicated that supervised individuals convicted of a felony transferred from another state for the following similar convictions are under kiosk-only reporting requirements (unless the individual scores at a high risk to re-offend based on Washington's risk assessment tool):

- Arson First and Second;
- Bail Jumping with Murder First Offense;
- Burglary First Degree;

- Homicide by Watercraft by being under the influence of intoxicating liquor or drugs, by a disregard for the safety of others, or by operating a vessel in a reckless manner;
- Leading Organized Crime;
- Malicious Explosion First or Second;
- Malicious Placement of Explosives First Degree;
- Over 18 and Delivering Heroin, Methamphetamine, or Narcotic from Schedule I/II, or Flunitrazepam from Schedule IV to Under 18;
- Robbery First and Second Degree;
- Trafficking First and Second Degree;
- Treason;
- Use of Machine Gun in Commission of Felony;
- Vehicular Homicide by being under the influence of intoxicating liquor or any drug, by a disregard for the safety of others, by the operation of a vehicle in a reckless manner;
- Assault Second and Third Degree;
- Drive-by Shooting;
- Extortion First and Second Degree;
- Kidnapping Second Degree;
- Manslaughter Second Degree;
- Vehicular Assault under the influence or by operation in a reckless manner, or driving a vehicle with disregard for the safety of others;
- Identity Theft First and Second Degree;
- Promoting Prostitution First Degree;
- Intimidating a Juror;
- Intimidating a Witness;
- Intimidating a Public Servant;
- Bomb threat (if against a person);
- Unlawful imprisonment;
- Promoting a Suicide Attempt;
- Riot (if against a person);
- Stalking;
- Custodial Assault;
- Certain Domestic Violence Court Order Violations;
- Counterfeiting—Endangering Public Health and Safety;
- Felony Driving a motor vehicle under the influence of intoxicating liquor/drug;
- Felony Physical control of a motor vehicle under the influence of intoxicating liquor/drug; or
- Other drug offenses not listed previously.

And finally, individuals convicted of a misdemeanor in another state transferred to Washington receive kiosk-only reporting instructions unless the conviction meets the following criteria:

- Communication with a Minor for Immoral Purposes;
- Custodial Sexual Misconduct Second Degree;
- Sexual Misconduct with a Minor Second Degree;
- Failure to Register as a Sex Offender;
- Assault Fourth Degree or Violation of a Domestic Violence court order and a prior conviction for:
    - A Violent Offense (the first nine offenses listed);
    - Sex offense;
    - Above listed felony offenses, excluding drug offenses;
    - Assault Fourth Degree;
    - Violation of a Domestic Violence court order

All other convictions not listed receive kiosk-only reporting.

Applicable Rules

Rule 1.101 provides:

> '*Supervision' means the oversight exercised by authorities of a sending or receiving state over a supervised individual for a period of time determined by a court or releasing authority, during which time the supervised individual is required to report to or be monitored by supervising authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the supervised individual at the time of release to the community or during the period of supervision in the community.*

Rule 4.101 provides:

> *(a) A receiving state shall supervise individuals transferred under the interstate compact in a manner consistent with the supervision and risk level of other similarly sentenced individuals sentenced in the receiving state.*

Rule 4.102 Duration of Supervision:

> *A receiving state shall supervise individuals transferred under the interstate compact for a length of time determined by the sending state*

Analysis

Because Washington provides only limited or no DOC supervision for many individuals, receiving states must recognize that some supervised individuals from Washington who previously reported to probation or parole officers may now be supervised only through kiosk reporting or not supervised at all. Individuals no longer subject to any community supervision in Washington are not subject to the Compact and may relocate without notice.

This law does not prevent other states from transferring supervision to Washington, but it does affect how Washington administers supervision. Even for crimes that ordinarily involve active reporting, Washington may impose only kiosk-based or minimal supervision. Under ICAOS Rule 4.101, however, a receiving state must supervise transferred individuals in a manner consistent with other similarly sentenced individuals in that state, meaning Washington must provide whatever level of supervision it applies to comparable in-state cases.

Although the statute restricts DOC authority, it does not bar sentencing courts from imposing conditions requiring reporting directly to the court or completing behavioral programs. When such court-ordered conditions exist, the case still meets the Compact's definition of "supervision."

Conclusion

Washington's statute limits DOC supervision for many individuals, placing some cases outside the Compact's scope entirely. However, when a court imposes any conditions of supervision, Washington must still supervise the individual at the level applied to similarly situated individuals under Rule 4.101 and for the duration of supervision as determined by the sending state under Rule 4.102 when such cases continue to meet the Compact's definition of "supervision."

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 1-2011
Issued: 2011-01-21
Revised: 2026-02-04

Requested by: Washington
At Issue: Whether ICAOS Rule 2.105 applies to misdemeanor convictions pertaining to hunting which involve the use of a firearm and whether supervised individuals convicted and sentenced to supervision for such violations are thus subject to transfer under the compact.

Advisory Opinion 1-2011

Issued by: Harry E. Hageman, Executive Director & Richard L. Masters, Legal Counsel

Background

The State of Washington has requested an advisory opinion regarding the requirements of the Compact and ICAOS Rules when a supervised individual is convicted of a misdemeanor pertaining to hunting and involves the use of a firearm.

Applicable Rules

Rule 2.105 "Misdemeanants"

> *(a) A misdemeanor supervised individual whose sentence includes 1 year or more of supervision shall be eligible for transfer, provided that all other criteria for transfer, as specified in Rule 3.101, have been satisfied; and the instant offense includes one or more of the following-- . . .(2) an offense involves the use or possession of a firearm."*

Analysis

The literal text of Rule 2.105 (a) (2) specifies, without qualification, that a supervised individual whose misdemeanor offense involves the use or possession of a firearm and whose sentence includes one year or more of supervision is eligible for transfer of supervision under the compact. While Washington questions whether individuals convicted of hunting violations pose a threat to community safety, since the express provisions of ICAOS Rule 2.105 (a) (2) are unambiguous and not contrary to the purposes of the compact this rule must be interpreted based upon its 'plain meaning' as provided in the regulation. *See Lyng v. Payne, 476 U.S. 926 (1986); U.S. v. Stapf, 375 U.S. 118 (1963).*

Conclusion

ICAOS Rule 2.105 applies to all misdemeanor violations, including those pertaining to hunting, which involve the use of a firearm and individuals convicted and sentenced to supervision for such violations are thus subject to transfer under the compact.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 1-2012
Issued: 2012-01-20
Revised: 2026-02-04

Requested by: New Jersey
At Issue: Are persons who are acquitted by reason of insanity under the applicable New Jersey statute and who are released to the community by New Jersey courts subject to supervision or under conditions imposed by the court, eligible for interstate transfer of supervision under the compact?

Advisory Opinion 1-2012

Issued by: Harry E. Hageman, Executive Director Richard L. Masters, Legal Counsel

Background

According to the request for opinion and the text of the New Jersey statute in question, N.J.S.A.2 C: 4-6 through 4-9, requires the court to dispose of cases in which persons are acquitted by reason of insanity in the following manner:

"(1) If the court finds that the defendant may be released without danger to the community or himself without supervision, the courts shall so release the defendant; or (2) If the court finds that the defendant may be released without danger to the community or to himself under supervision of under conditions, the court shall so order; or (3) If the court finds that the defendant cannot be released with or without supervision or conditions without posing a danger to the community or to himself, it shall commit the defendant to a mental health facility approved for this purpose by the Commissioner of Human Services to be treated as a person civilly committed." The New Jersey law also provides that "Each defendant's case shall be specifically reviewed as provided by the law governing civil commitment." See Section 2C:4-9(d).

The opinion request is sought due to a recent case in which New Jersey proposed a transfer of probation supervision under ICAOS involving a person acquitted, by reason on insanity, under the above statute and but the transfer request was denied by the receiving state. New Jersey states that the proposed transfer, assuming the compact applies, meets the requirements of ICAOS Rule 3.101.

Applicable Rules

Rule 1.101 Definitions:

> *'Supervised Individual' means an "offender" defined by Article II of the Interstate Compact for Adult Offender Supervision 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 Compact;*
>
> *'Supervision' means the oversight exercised by authorities of a sending or receiving state over a supervised individual for a period of time determined by a court or releasing authority, during which time the supervised individual is required to report to or be*

monitored by supervising authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the supervised individual at the time of release to the community or during the period of supervision in the community;

Rule 3.101 Mandatory transfer of supervision:

At the discretion of the sending state, a supervised individual shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the supervised individual:
(a) has more than 90 calendar days or an indefinite period of supervision remaining at the time the sending state transmits the transfer request; and
(b) has a valid plan of supervision; and
(c) is in substantial compliance with the terms of supervision in the sending state; and
(d) is a resident of the receiving state; or
(e)

1. *has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and*
2. *can obtain employment in the receiving state or has means of support.*

Analysis

As referenced herein, the ICAOS rules define "supervised individual" ……as an adult placed under, or 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. Thus it is clear that under this definition that an individual supervised pursuant to the terms of the Compact and its rules must be one who has been determined to have committed a criminal offense. (emphasis added)

"Supervision" is defined as the oversight exercised by authorities of a sending or receiving state over a **supervised individual**, which term, as noted above is defined as a person who is placed under or made subject to supervision **as the result of the commission of a criminal offense**. (emphasis added)

As the U.S. Supreme Court has determined with respect to statutory construction, "Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning ... [o]ur inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent." See *Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997).*

It is clear from the foregoing definitions that in order for the compact to apply the case must involve interstate transfer of supervision of a person who qualifies as a "supervised individual" under the ICAOS Rules. The ICAOS rules define a supervised individual as one who has been determined to have committed a criminal offense, whether as the result of a conviction, the entry of a plea of guilt or the entry of a 'no contest' plea to the criminal charges of which the individual is accused.

However, the New Jersey statute in question here clearly requires, as a prerequisite to the application of the law, that there must be an "acquittal by reason of insanity." An "acquittal, by definition, is a *"legal certification of the innocence of a person who has been charged with a crime." (See Black's Law Dictionary, 5th Edition).* Even in cases where, as here, the acquittal has resulted by reason of insanity, in the absence of a determination of guilt or criminal responsibility for the commission of a crime, the person acquitted is not eligible for transfer under the compact because such person has not been judicially determined to have committed a crime. In fact, per the terms of the statute just the opposite has occurred.

A similar analysis was recently used by the Supreme Court of Virginia in reviewing an issue arising under Virginia law as to whether ICAOS is applicable to persons released under the Sexually Violent Predators Act (SVPA). The Court held that the Interstate Compact did not apply to a person released under the SVPA "*because he was not 'an adult placed under, or subject to, supervision as the result of the commission of a criminal offense.' Id., art. II. Rather, he is subject to supervision by the Commonwealth because he has been found to be an SVP under the SVPA—which is a civil, not a criminal, statutory scheme.*" See *Commonwealth of Virginia v. Amerson, 706 S.E2d 879, 884 (2011)*.

Summary

Based on the above facts as set out in the request and considering the provisions of the New Jersey statute, the literal language and plain meaning the applicable definitions and provisions of both the interstate compact and ICAOS rules, and other applicable legal authorities, it is our opinion that persons 'acquitted' by reason of insanity under the New Jersey 'Carter-Krol' statute are not eligible for interstate transfer of supervision under the compact.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 2-2012
Issued: 2012-04-20
Revised: 2026-02-04

Requested by: Arizona
At Issue: Does a receiving state's acceptance of a transfer request under Rule 3.105(a), or approval of reporting instructions, create or determine a supervised individual's release date from custody?

Advisory Opinion 2-2012

Issued by: Harry E. Hageman, Executive Director & Richard L. Masters, Legal Counsel

Background

Whether a receiving state's acceptance of a transfer request under ICAOS Rule 3.105(a), or its approval of reporting instructions, can trigger the release of a supervised individual from a correctional facility who would otherwise remain incarcerated. Arizona notes that several states, including Arizona, have interpreted Rule 3.105(a) to mean that the receiving state's acceptance or approval of reporting instructions establishes the individual's "planned release date." Examples include court or parole documents stating:

- "Parole out of state only to [receiving state]"
- "Interstate Compact to [receiving state] only"
- "Release only after receiving state acceptance"
- "Jail term of 120 days; may be released early only if receiving state accepts the transfer"

These types of conditions have led to confusion as to whether acceptance under Rule 3.105(a) authorizes or triggers early release.

Applicable Rules and Statutes

Rule 3.105: Pre-Release Transfer Request

> *(a) A sending state may submit a completed request for transfer of supervision no earlier than 120 calendar days prior to a supervised individual's planned release from a correctional facility.*

Rule 3.105 allows the sending state to submit a completed transfer request up to 120 days before the planned release date. The rule assumes a release date already exists under state law or authority.

Rule 4.102: Duration of Supervision in the Receiving State

> *A receiving state shall supervise individuals transferred under the interstate compact for a length of time determined by the sending state.*

Rule 4.102 provides that the sending state retains exclusive control over the duration of supervision, including when it begins and ends.

Analysis

Accepting a transfer request or approving reporting instructions does not establish a supervised individual's release date. Rule 3.105(a) presupposes that the sending state has already determined the individual's release date in accordance with its own laws, court orders, and releasing authorities. Nothing in Rule 3.105 authorizes a receiving state to create, advance, or modify that date.

Reporting instructions simply allow an individual who is lawfully released to travel and report to the receiving state. They do not grant authority to release earlier than permitted by the sending state's legal and correctional processes. Moreover, allowing acceptance or reporting instructions to determine an individual's release date would also conflict with Rule 4.102. If acceptance triggered release, a receiving state would effectively influence when supervision begins, which Compact Rules clearly do not permit.

Although certain sending states may elect to condition an individual's release on the receiving state's willingness or ability to accept a transfer, that determination rests solely with the sending state. Release decisions are exclusively within the control of the sending state's courts, statutes, and releasing authorities. The Compact does not confer upon ICAOS or any receiving state the power to establish, modify, or accelerate an individual's release date, nor to influence sentencing, incarceration terms, or parole eligibility. These matters lie entirely within the jurisdiction of the sending state and its corresponding substantive law and procedure.

Conclusion

Under Rule 3.105(a), neither the receiving state's acceptance of a transfer request nor the approval of reporting instructions may be used as the basis for determining or altering an individual's release date from a correctional facility. Although a sending state may choose, as a matter of its own policy or release procedures, to predicate an individual's release on the receiving state's willingness or ability to accept the transfer, that decision remains exclusively within the authority of the sending state.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 3-2012
Issued: 2012-05-14
Revised: 2026-02-04

Requested by: California
At Issue: Whether a supervised individual whose supervision was never transferred under the Compact and who subsequently absconds supervision is subject to the terms of the Compact and ICAOS rules and may the State from which the individual absconded return the individual under the Compact or is the Extradition Clause of the U.S. Constitution the only means by which such an absconder may be returned?

Advisory Opinion 3-2012

Issued by: Executive Director-Harry Hageman and Chief Legal Counsel: Richard L Masters

Background

A California supervised individual absconded supervision after being placed on probation for a felony conviction. Due to the unknown whereabouts of the individual the probation status was subsequently revoked, and a California-only warrant was issued by the Courts.

Several years later the probation officer assigned to the case became aware that the individual was residing in the State of Montana. The supervised individual was never authorized to relocate from California to Montana nor was a transfer request ever initiated. When the probation officer requested to upgrade the California-only warrant the Court refused on the grounds that the individual is deemed a fugitive and cannot be returned under the Compact.

The State of California has requested an advisory opinion concerning the applicability of the Compact and ICAOS rules, including Rule 2.110, to return an individual who was never transferred under the compact and later absconded.

Applicable Constitutional Provisions, Rules, and Statutes

Article IV, Section 2 of the United States Constitution provides as follows:

> *"A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."*

Article I of the Interstate Compact for Adult Offender Supervision provides in relevant part:

> *"The compacting states to this Interstate Compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the Bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdiction."*

Rule 2.110 Transfer of supervised individuals under this compact:

(a) No state shall permit a supervised individual who is eligible for transfer under this compact to relocate to another state except as provided by the Compact and these rules.

1. *If a supervised individual is in the receiving state without proper approval, the sending or receiving state shall immediately notify each other.*
2. *Upon confirmation that a supervised individual is in the receiving state without proper approval, the sending and receiving states may mutually agree to allow the supervised individual to remain in the receiving state and issue reporting instructions while the investigation is completed. If an agreement is not reached, the sending state shall direct the individual to return to the sending state within 15 business days.*
3. *If the supervised individual does not return to the sending state as ordered, the sending state shall issue a warrant no later than 15 business days following the individual's failure to appear in the sending state.*

(b) A supervised individual who is not eligible for transfer under this Compact is not subject to these rules and remains subject to the laws and regulations of the state responsible for supervision.

Rule 3.101(c) Mandatory transfer of supervision

At the discretion of the sending state, a supervised individual shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the supervised individual:

(c) is in substantial compliance with the terms and conditions of supervision in the sending state

Analysis

It is clear from the foregoing provisions of the Constitution, the Compact and ICAOS Rules that "extradition" under the federal Constitution and "retaking" under the Compact are not one and the same. Article IV, Section 2 of the Constitution only applies to a person who has been "charged in any state with treason, felony, or other crime" and "who shall flee from Justice, and be found in another state."

In contrast, supervised individuals transferred from one state to another under the Interstate Compact for Adult Offender Supervision have clearly not fled from justice and are lawfully in the receiving state pursuant to the terms of the Compact and ICAOS rules, including Rule 2.110.

A number of federal and state courts decisions have distinguished "extradition" from "retaking" based on the foregoing provisions of the Constitution and the Interstate Compact and have recognized that these terms represent two distinct legal processes. See for example, I*n re Klock, 133 Cal. App. 3d 726 (Cal. Ct. App. 1982); People v. Bynul, 524 N.Y.S.2d 321 (N.Y. Crim. Ct. 1987); See also Todd v. Florida Parole and Probation Commission, 410 SWo.2d 584 (Fla. 1st DCA 1982)* ('[W]hen a person is paroled to another state pursuant to an interstate compact, all requirements to obtain extradition are waived."). An interstate compact has been held to displace the Uniform Criminal Extradition and Rendition Act (UCERA) as to certain individuals convicted of crimes and requires only minimal formalities as to the return of those individuals. Id. Furthermore, the supervised individual's agreement to waive

extradition as a condition of relocating waives the need for formal extradition proceedings upon demand by the sending state that a supervised individual be returned. Cf., *Wymore v. Green, 245 Fed. Appx. 780, 2007 WL 2340795 (10th Cir. 2007)* ('plaintiff's waiver of extradition renders any formal request or permission from the requesting and sending state governors unnecessary. In fact, the effect of the above referenced Compact provisions on the extradition clause of the U.S. Constitution, in effect creating an alternative to extradition, is a primary reason why Congressional consent to the Compact was necessary. See *Cuyler v. Adams, 449 U.S. 433 (1981)*. Having obtained such consent both the provisions of the Compact and the ICAOS rules have the status of federal law. See *Texas v. New Mexico, 482 U.S. 124 (1987).*

Notwithstanding the legal distinction between extradition and retaking, it is important to emphasize that once supervision of a supervised individual is transferred to a receiving state under the terms of ICAOS Rule 3.109, the waiver of extradition signed by an individual applying for interstate transfer under the compact applies not only to return or retaking from the receiving state but also to return or retaking from "any state to which the individual may abscond . . ." This waiver is required as a condition of transferring supervision and the validity of such a waiver has been judicially recognized. See *Evans v. Thurmer, 278 Fed. Appx. 679, 2008 WL 2149840 (7th Cir. 2008)., O'Neal v. Coleman, 2006 U.S. Dist. LEXIS 40702 (W.D. Wis. June 16, 2006; also Johnson v. State, 957 N.E.2d 660 (Ind. App. 2011).*

The waiver of extradition outlined in ICAOS Rule 3.109 applies to any member state where the supervised individual may be located. Under Rule 3.109, authorities are not limited in their pursuit of fugitives or in returning a fugitive to the sending state, although they may be required to present evidence that the fugitive is the person being sought and that they are acting with lawful authority, e.g., they are lawful agents of the state enforcing a properly issued warrant. See *Ogden v. Klundt, 550 P.2d 36, 39 (Wash. Ct. App. 1976).*

However, in order for the sending state to avail itself of this alternative to extradition, and for the Compact and ICAOS rules to apply, the supervision of the individual must have been properly transferred to the receiving state under the jurisdiction of the Compact. While ICAOS Rule 2.110 (a) prohibits relocation of a supervised individual "who is eligible for transfer under this compact except as provided by the Compact and these rules," this requirement must be read and interpreted consistently with Rule 2.110 (b) which provides that a individual **who is not eligible for transfer under this Compact is not subject to these rules and remains subject to the laws and regulations of the state responsible for the individual's supervision." Moreover, 'eligibility'** for transfer of supervision under ICAOS Rule 3.101 (c) also requires that the supervised individual **"is in substantial compliance with the terms of supervision in the sending state.**" (emphasis added).

In this case, California clearly states that, "The supervised individual was never authorized to relocate from California to Montana nor was a transfer request ever initiated." Even if an application for transfer of supervision under the Compact was filed the individual, having absconded from supervision in California, would not be 'eligible' for transfer under Rule 3.101 (c). Since the individual's supervision was never transferred to a receiving state under the Compact and no application for transfer or waiver of extradition ever occurred, neither the Compact nor the ICAOS rules apply to this individual and as a 'fugitive from justice,' having absconded from probation in California, must be returned under the extradition clause of the U.S. Constitution.

Conclusion

Where jurisdiction over a parolee or probationer is vested in the compact transfer process, as provided under the Compact and ICAOS Rules, the Constitutional provisions concerning extradition need not apply. If the supervised individual was transferred into the state under the provisions of the interstate compact, then the return of the individual, even in the case of an absconder, is properly accomplished pursuant to the provisions of the Compact and its duly authorized rules and regulations.

However, when the individual’s supervision was never transferred to a receiving state under the Compact and no application for transfer or waiver of extradition ever occurred, neither the Compact nor the ICAOS rules apply to this individual who, as a ‘fugitive from justice’ having absconded from probation in California, must be apprehended and returned under the extradition clause of the U.S. Constitution.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 4-2012
Issued: 2012-10-11

Requested by: Minnesota
At Issue: Whether or not the definition of the term 'Relocate' in ICAOS Rule 1.101 and as applicable in ICAOS Rule 2.110, should be interpreted to mean that an offender may not proceed and remain in another state for a cumulative period exceeding 45 days in any 12 month period without being in violation of ICAOS Rule 2.110?

Advisory Opinion 4-2012

Issued by: Harry E. Hageman, Executive Director & Richard L. Masters, Legal Counsel

Background

Pursuant to ICAOS Rule 6.101, the State of Minnesota has requested a formal opinion as to whether or not the definition of the term 'Relocate' in ICAOS Rule 1.101 should be interpreted to mean that an offender may not proceed and remain in another state for a cumulative period exceeding 45 days in any twelve-month period without benefit of reporting instructions and/or formal acceptance of transfer. Minnesota states that its interpretation is that an offender may not proceed and remain in another state for a cumulative period exceeding 45 days in any twelvemonth period without reporting instructions and/or formal acceptance of transfer. Minnesota also states that there are other states which do not interpret the definition of 'Relocate' to limit the time period within which an offender may be allowed to proceed and remain in another state without reporting instructions or formal acceptance of transfer to a cumulative period of 45 days in any twelve-month period leading to disparate application of ICAOS Rule 2.110.

Thus, Minnesota poses the question, whether a state would be in violation of ICAOS Rule 2.110 if permitting an offender to proceed to another state for multiple periods of time, never exceeding 45 consecutive days in any single occurrence, as long as the offender returns to the original state for at least one 24 hour period prior to the expiration of each 45 consecutive day travel event, while issuing a second or subsequent 45 day maximum travel permit(s) to return to that specific state, without benefit of transfer under the applicable Compact Rules.

Applicable Rules and Statutes

The ICAOS provisions and rules, which are implicated in the request, include the following:

Rule 1.101 "Relocate" means to remain in another state for more than 45 consecutive days in any twelve-month period.

Rule 2.110 "Transfer of offenders under this compact"

> *(a) No state shall permit an offender who is eligible for transfer under this compact to relocate to another state except as provided by the Compact and these rules.*

Analysis and Conclusion

"Relocate" is defined under ICAOS Rule 1.101 as remaining in another state *"for more than 45*

consecutive days in any twelve-month period." (emphasis added).

While the term 'consecutive,' contained in the foregoing definition is not defined in the ICAOS Rules, under accepted maxims of statutory constructions, in the absence of a special definition contained in the statute or regulation, words are defined using their ordinary or commonly accepted meaning. As the U.S. Supreme Court has long held, "In cases of statutory construction, we begin with the language of the statute. Unless otherwise defined, 'words will be interpreted as taking their ordinary, contemporary, common meaning,'" *Diamond v. Diehr, 450 U.S. 175, 182 (1981), quoting Perrin v. United States, 444 U.S. 37, 42 (1979)*. In the case of the word 'consecutive,' it is defined as "following one after the other in order." *See Merriam-Webster's Dictionary 2012*.

Minnesota's proffered interpretation is certainly consistent with the public safety concerns served by the Compact. However, the Commission chose to use the word 'consecutive' rather than 'cumulative' in defining the term 'Relocate' with respect to the number of days in which an offender could remain in another state before having 'relocated' under the compact.

As the U.S. Supreme Court has further determined with respect to statutory construction, "Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning ... [O]ur inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent." *See Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997)*.

Thus, while such a practice may be subject to criticism based on public safety concerns, the current definition of "Relocate" does not appear to limit the cumulative number of days within which an offender may be permitted to remain in another state to a total of 45 cumulative days during the same 12 month period.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 5-2012
Issued: 2012-10-11
Revised: 2026-02-04

Requested by: Colorado
At Issue: Whether ICAOS Rule 5.108(e) permits the use of 2-way video closed circuit television during probable cause hearings where necessary to protect a witness from harm which might result from testifying in person.

Advisory Opinion 5-2012

Issued by: Harry E. Hageman, Executive Director and Richard L. Masters, Legal Counsel

Background

Pursuant to ICAOS Rule 6.101 the State of Colorado has requested whether ICAOS Rule 5.108(e) permits the use of 2-way video closed circuit television during probable cause hearings where necessary to protect a witness from harm which might result from testifying in person, such as a child who is a witness who might be traumatized by being required to testify in the presence of the supervised individual. In the request Colorado suggests that since the language of Rule 5.108(e) is similar to that of the *U.S. Supreme Court in Morrissey v. Brewer, 408 U.S. 471* (1972), that ICAOS "has extended the rights provided by the U.S. Supreme Court (in the *Morrissey* opinion) at a final parole revocation hearing to probable cause hearings as well."

Applicable Rules

Rule 5.108(e) Probable Cause Hearing in receiving state:

> *(e) The supervised individual shall be entitled to the following rights at the probable cause hearing:*
>
> 1. *Written notice of the alleged violation(s);*
> 2. *Disclosure of non–privileged or non–confidential evidence regarding the alleged violation(s);*
> 3. *The opportunity to be heard in person and to present witnesses and documentary evidence relevant to the alleged violation(s);*
> 4. *The opportunity to confront and cross–examine adverse witnesses, unless the hearing officer determines that a risk of harm to a witness exists.*

Analysis

As Colorado suggests, the language used by the Court in *Morrissey* regarding probable cause, "preliminary hearings", in close geographic proximity to where the alleged violations occurred, is similar to that describing the due process requirements of formal revocation hearings. However, just because the language of ICAOS Rule 5.108(e) is similar to that used in *Morrissey* with respect to final revocation hearings does not mean that ICAOS Rules on retaking require either a 'full blown' revocation hearing or the same level of due process guarantees as those provided in a final revocation hearing once the supervised individual is returned to the receiving state. See *Morrissey v. Brewer, 408 U.S. 471, 487-489 (1972)*. In *Morrissey* the preliminary probable cause hearing in the receiving state, if needed, is

clearly an 'informal hearing' which is not required to be conducted before a judge, at which time the supervised individual is afforded the opportunity to be present and present evidence on his own behalf as well as a "conditional right" to confront adverse witnesses. This is also the same standard later applied to probationers by the Court in *Gagnon v. Scarpelli, 411 U.S. 778 (1973)*.

Moreover, in *Morrissey* the Court observed that even in the 'preliminary hearing' conducted in the receiving state, while the parolee may request that the "person who has given adverse information on which parole revocation is to be based is to be made available for questioning in his presence . **. . . if the hearing officer determines that an informant would be subjected to risk of harm if his identity were disclosed, he need not be subjected to confrontation and cross-examination."** See *Morrissey*, p. 487 (emphasis added). This language indicates that the Court does not regard the ability to "confront" a witness in person as absolute and that the hearing officer has discretion to limit or even dispense with this requirement if there is a 'risk of harm' to the witness.

Consistent with *Morrissey*, ICAOS Rule 5.108(e) expressly provides that the opportunity to confront and cross-examine adverse witnesses in a probable cause hearing is subject to the determination by the hearing officer "that a risk of harm to a witness exists", in which case such a right may be limited.

Additionally, as Colorado points out, the U.S. Supreme Court has held that a criminal defendant's due process right, under the Sixth Amendment to the U.S. Constitution, to 'confront' an adverse witness, even in a criminal trial, may be limited by allowing the use of 2-way video closed circuit television in circumstances where such a procedure is necessary to protect a child witness from the trauma of testifying in person in front of the defendant. See *Maryland v. Craig, 497 U.S. 836 (1990)*. In fact the Court specifically held that the 'confrontation clause' of the U.S. Constitution "does not guarantee criminal defendants an **absolute** right to a face-to-face meeting with the witnesses against them at trial." *Id. at pp. 836-837*.

Based upon the above referenced guidance in these U.S. Supreme Court decisions, it seems clear that if the Sixth Amendment's confrontation clause allows the use of 2-way video closed circuit television in the actual trial of a criminal defendant in order to prevent harm to a witness which might result from testifying in person, such a procedure is also permissible, if determined by the hearing officer to be necessary, during the informal inquiry required at the preliminary hearing to determine probable cause under ICAOS Rule 5.108(e).

Conclusion

In summary, based upon the terms of the compact, the above referenced rules and the legal authorities cited herein, ICAOS Rule 5.108(e) permits the use of 2-way video closed circuit television during probable cause hearings where determined by the hearing officer to be necessary to protect a witness from harm which might result from testifying in person.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 1-2014
Issued: 2014-02-12

Requested by: Vermont
At Issue: Whether an offender under supervision in the receiving state, who is charged with a new criminal offense in the receiving state and arrested but released on bail on the new offense, may be subsequently arrested and detained for retaking by the sending state pending the resolution of the new criminal charge.

Advisory Opinion 1-2014

Issued by: Harry E. Hageman, Executive Director & Richard L. Masters, Legal Counsel

Background

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

The State of Vermont was supervising a Florida offender who was the subject of a Violation Report concerning a new criminal charge in Vermont. Florida responded to the violation report with an arrest warrant. However, by the time the warrant was received, the offender was released on bail on the new criminal charge. While the Vermont probation office confirmed that the Florida warrant was 'extraditable,' Vermont is asking if it is permissible to arrest and detain the offender until consent is given to Florida to retake the offender or until criminal charges are dismissed, or the sentence is satisfied, or the offender is released on supervision for the commission of the subsequent offense.

Applicable Rules and Statutes

Rule 4.109-1 provides:

"Rule 4.109-1 Authority to arrest and detain

An offender in violation of the terms and conditions of supervision may be taken into custody or continued in custody by the receiving state."

Rule 5.101 (c) in relevant part provides[1]:

Rule 5.101 Retaking by the sending state

> *c) If the offender has been charged with a subsequent criminal offense in the receiving state, the offender shall not be retaken without the consent of the receiving state, or until criminal charges have been dismissed, sentence has been satisfied, or the offender has been released to supervision for the subsequent offense.*

Rule 5.111 provides:

"Rule 5.111 Denial of bail or other release conditions to certain offenders

An offender against whom retaking procedures have been instituted by a sending state or receiving state shall not be admitted to bail or other release conditions in any state."

Analysis and Conclusion

In this case application, the above referenced rules appear to be in conflict, since the arrest on the new charge in Vermont resulted in an arrest warrant being issued and Florida seeking to retake the offender since the new criminal charge constitutes a violation of the terms and conditions of probation in the State of Florida. However, the Vermont court released the offender after being informed by the State of Florida that the warrant was not "extraditable," although Florida subsequently clarified that the warrant was in fact "extraditable." As a matter of practice, if a receiving state is not seeking retaking, but simply informing a sending state of pending charges or new violations, a progress report should be initiated as a violation report triggers the retaking process.

Since the offender is not 'available' for retaking under ICAOS Rule 5.101(c), due to the fact that the appropriate authorities in Vermont did not consent to retaking, the criminal charges weren't dismissed, nor was the sentence satisfied and the offender had not been released to supervision for the subsequent offense, Florida cannot retake the offender.

Vermont further asks whether it may permissibly arrest and detain the offender on the Florida arrest warrant. As in other cases of statutory construction, the provisions of the Compact statute and rules should be interpreted in harmony with other sections of the statute, or in this case the above referenced ICAOS rules, and "*plain meaning is examined by looking at the language and design of the statute as a whole*." See, Lockhart v. Napolitano, 573 F.3d 251 (6th Cir. 2009). Consistent with such a "harmonious" interpretation, a literal reading of Rule 5.101(c) and Rule 5.111 reveals a clear intent that the process of 'retaking' under 5.101(c) is not permitted to continue, even if such process has been instituted by the sending state, unless and until one of the prerequisites of Rule 5.101(c) are satisfied.

Moreover, since the time frame in which any of those prerequisites will be satisfied by Vermont cannot be determined, it seems inconsistent with the demands of due process that the offender should be detained indefinitely. See Morrissey v. Brewer, 408 U.S. 471, 481, 488 (1972)(*"The revocation hearing must be tendered within a reasonable time after the parolee is taken into custody. A lapse of two months, as respondents suggest occurs in some cases, would not appear to be unreasonable"*). See also, Doggett v. U.S., 505 U.S. 647, 651 (1992)(*'delays of less than a year (between indictment and trial) are as a general matter constitutionally adequate . . .'*) See also Barker v. Wingo, 407 U.S. 514, 530 (1972). For the same reason, it is also inconsistent with the above ICAOS rules for a sending state, such as Florida in this case, to issue a warrant for the arrest of the offender until he or she is available for retaking.

It is worth noting that circumstances such as this prompted the Commission to amend ICAOS Rules by adding Rule 5.101-1 to clarify when such an offender is 'available' for retaking and an arrest warrant may be appropriately issued by the sending state. Thus, Vermont would be permitted to arrest and detain the offender on Florida's arrest warrant in the event one of the four requirements for retaking referred to in Rule 5.101 (c) (*now Rule 5.101-1*) are met. As the U.S. Supreme Court has held, "[I]nterpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available." Nixon v. Missouri Mun. League, 541 U.S. 125 (2004); Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 575 (1982).

Summary

In summary, based upon the terms of the compact, the above referenced rules, and the legal authorities cited herein, since an offender under supervision in the receiving state who is charged with a new criminal offense cannot be retaken until one of the prerequisites of ICAOS Rule 5.101(c) has been satisfied, it is inconsistent with both the ICAOS rules and due process for a warrant to be issued by the sending state or for the offender to be arrested and detained indefinitely, if subsequently released to

bail on a new criminal charge. However, once the provisions of Rule 5.101(c) have been satisfied, both arrest and detention of the offender without bail on the compact warrant are required.

[1] On August 28, 2013, the Commission amended rule 5.101 and created 5.101-1. The language in 5.101 (c) is now reflected in 5.101-1. Language was added to this rule clarifying that the pending charges must be a felony or violent crime and that the terms of 5.101-1 be met "unless the sending and receiving states mutually agree to the retaking or return."

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 1-2015
Issued: 2015-02-12
Revised: 2026-02-04

Requested by: North Carolina
At Issue: Whether a receiving state may impose short-term confinement for probation violations on a supervised individual transferred under the Compact when such confinement is authorized by the receiving state's statute for individuals originally sentenced in that state.

Advisory Opinion 1-2015

Issued by: Harry E. Hageman, Executive Director and Richard L. Masters, Legal Counsel

Background

North Carolina enacted a statute authorizing the short-term confinement of individuals under its probation jurisdiction, commonly known as a "Quick Dip" sanction, for a period of up to three (3) days at a time in response to violations of supervision conditions. State officials ask whether this statutory sanction may be applied to individuals transferred under the Compact.

Applicable Rules

Rule 1.101:

> *'Revocation' means the course of action by a court, sentencing authority or paroling authority to rescind a supervised individual's supervision term and impose a jail or prison sentence due to an act or pattern of behavior that could not be successfully addressed through documented corrective actions or graduated responses in the community*

> *'Supervision' means the oversight exercised by authorities of a sending or receiving state over a supervised individual for a period of time determined by a court or releasing authority, during which time the supervised individual is required to report to or be monitored by supervising authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the supervised individual at the time of release to the community or during the period of supervision in the community.*

Rule 4.101 Manner and Degree Supervision:

> *(a) A receiving state shall supervise individuals transferred under the interstate compact in a manner consistent with the supervision and risk level of other similarly sentenced individuals sentenced in the receiving state.*
> *(b) If a supervised individual violates conditions of supervision, the individual may be sanctioned in the receiving state during the term of supervision in a manner consistent with similarly sentenced individuals in the receiving state.*
> *(c) Receiving states shall document the use of incentives, corrective actions, graduated*

responses, and other supervision techniques.

Rule 4.101-1 Authority to Arrest and Detain:

A supervised individual in violation of the conditions of supervision may be taken into custody or continued in custody by the receiving state.

Rule 4.103 Conditions of Supervision:

(a) At the time of acceptance or during the term of supervision, the receiving state may impose a condition on a supervised individual if that condition would have been imposed on a supervised individual sentenced in the receiving state.
(b) A receiving state shall notify a sending state that it intends to impose, or has imposed, a condition on the supervised individual.
(c) A sending state shall inform the receiving state of any conditions to which the supervised individual is subject at the time the request for transfer is made or at any time thereafter.
(d) A receiving state that is unable to enforce a condition imposed in the sending state shall notify the sending state of its inability to enforce a condition at the time of request for transfer of supervision is made.

Analysis

ICAOS Rule 4.101 requires North Carolina to supervise transferred individuals in the same manner as similarly sentenced in-state individuals of the same risk level. This includes imposing sanctions for supervision violations consistent with those North Carolina applies to its own probationers. Moreover, Rule 4.101-1 specifically states that receiving states may take a supervised individual into custody when conditions are violated.

With that said, ICAOS Rules 4.103(a) and (b) require North Carolina to provide notice of these sanctions to sending states. A short-term confinement sanction imposed in response to a supervision violation, such as North Carolina's "Quick Dip" program, constitutes a condition of supervision for Compact purposes. Rule 4.103 requires the receiving state to notify the sending state of any such condition either at the time of acceptance or during supervision. Thus, while North Carolina may impose this sanction and supervise Compact individuals consistent with its own supervision of in-state probationers, it must notify sending states of this practice. This notification requirement ensures consistent application of the Compact and allows the sending state to remain fully informed of the supervised individual's supervision status.

Conclusion

A supervised individual transferred to North Carolina under the Compact may lawfully be subject to short-term confinement ("Quick Dip") for probation violations, consistent with sanctions applied to similar individuals originally supervised in North Carolina. However, because this is an "imposed condition" under Rule 4.103, North Carolina must notify the sending state accordingly.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 2-2015
Issued: 2015-02-12
Revised: 2026-02-04

Requested by: Virginia
At Issue: Whether an individual who has been granted a conditional pardon in the Commonwealth of Virginia and is transferred to a secure treatment facility in the State of Florida is eligible for transfer under the Interstate Compact for Adult Offender Supervision?

Advisory Opinion 2-2015

Issued by: Harry E. Hageman, Executive Director & Richard L. Masters, Legal Counsel

Background

The Commonwealth of Virginia recently granted a conditional pardon to a convicted individual and ordered him to be transferred to a secure treatment facility in Florida for a period of ten (10) years from his release by the Department of Corrections conditioned upon the successful fulfillment of all treatment recommendations and requirements of the 'treatment team' and staff providing his care. Failure to comply with all conditions will result in the loss of all privileges provided under the terms of the conditional pardon and, at the discretion of the Governor, subject the individual to immediate arrest and incarceration to complete the terms of his original sentences. Based upon the above facts and pursuant to Commission Rule 6.101(c), the Commonwealth of Virginia has requested an advisory opinion regarding the requirements of the Compact and ICAOS Rules on the following issue:

Applicable Rules

Rule 1.101 Definitions:

> *'Supervised individual' means an "offender" defined by Article II of the Interstate Compact for Adult Offender Supervision 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 Compact.*
>
> *'Supervision' means the oversight exercised by authorities of a sending or receiving state over a supervised individual for a period of time determined by a court or releasing authority, during which time the supervised individual is required to report to or be monitored by supervising authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the supervised individual at the time of release to the community or during the period of supervision in the community.*

Rule 2.106 Supervised individuals Subject to Deferred Sentences:

> *(a) Supervised individuals subject to deferred sentences are eligible for transfer of supervision provided that all other criteria for transfer, as specified in Rule 3.101 (a), (b), and (c) have been satisfied and the:*
>
> *1. supervised individual has waived their right to trial and entered plea of guilt or no*

contest, and

2. *plea has been accepted by the court.*

(b) Persons subject to supervision pursuant to a pre-trial release program, bail, or similar program are not eligible for transfer under the terms and conditions of this compact.

Analysis

In some cases, the placement of an individual in an out of state treatment program may trigger the requirements of the Compact even if the individual is not subject to supervision by corrections officials. It should be noted, that even in the absence of direct supervision by corrections officials, a provision in a court order requiring compliance with the terms of treatment constitute "supervision" for purposes of triggering the Compact. The imposition of treatment as a condition of release with the corresponding requirement of adherence to all treatment recommendations, and the probability of probation revocation upon failure to comply, is sufficient requirement for the sending state to comply with the Compact and its rules.

Clearly this case involves a person who has been convicted of not just one, but three separate felonies all of which involved assault and battery on law enforcement officers, including a corrections officer which occurred on 5-31-11, 3-7-14 and 1-8-15. The terms of the conditional pardon require the individual to comply with all treatment recommendations for a period of ten (10) years the violation of which will result in the forfeiture of all privileges granted and, at the discretion of the Governor, the individual "shall be subject to immediate incarceration to complete the term of his original sentences."

While in this case the terms and conditions of release are provided in the conditional pardon issued by the Governor of Virginia, it is equally clear that in Virginia, as in virtually all other states, a person with a conditional pardon remains subject to conditions of release. A conditional pardon does not restore civil rights or rights of citizenship, and the executive, like any other 'paroling authority' can revoke the pardon if a person does not comply with the conditions of release. In fact, a person receiving a conditional pardon has the same restrictions as a person on parole. When the conditions are not fulfilled, a conditional pardon or a parole can be revoked and the person violating such conditions can be re-imprisoned.

ICAOS Rule 2.106 is applicable to situations in which ". . . 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 individual 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 individual 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 individual but has suspended execution of the sentence in lieu of a program of conditional release." (*See* ICAOS Rule 2.106.)

Because the individual in this case has clearly been convicted of the felonies in question and has been conditionally released, by a paroling authority who in this case happens to be the Governor of the Commonwealth of Virginia, he is clearly a "supervised individual" for purposes of the Compact. It also appears that the terms of the conditional pardon satisfy the requirements of 'supervision' under the Compact. The conditional pardon provides for oversight to be exercised over the individual by the secure treatment facility, or in a less restrictive environment, for a fixed period of ten (10) years. Compliance with treatment conditions are required the violation of which will result in incarceration for the completion of the sentences previously imposed.

Conclusion

Based upon the terms of the Compact, the above referenced rules and the legal authorities cited herein,

an individual who has been granted a conditional pardon in the Commonwealth of Virginia and is transferred to a secure treatment facility in the State of Florida is eligible for transfer of supervision under the Interstate Compact for Adult Offender Supervision.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 3-2015
Issued: 2015-12-09
Revised: 2026-02-04

Requested by: Florida
At Issue: Whether an individual sentenced to two years in Maryland's Home Detention Program, or a comparable program in another state, is subject to the Compact during the period in which the home detention terms are in effect.

Advisory Opinion 3-2015

Issued by: Harry E. Hageman, Executive Director & Richard L. Masters, Legal Counsel

Background

According to the Florida, an individual convicted in Maryland for common law battery relocated to Florida immediately after sentencing in 2013. The sentencing court imposed two years in Maryland's Home Detention (HDP), followed by five years of probation. Maryland did not notify Florida of the individual's relocation or presence during the HDP period (09/30/2013–09/01/2015). After the two-year HDP term concluded, Maryland submitted a discretionary transfer request, noting that the individual was a Florida resident who should not remain unsupervised. Florida questioned why no transfer request was made at the time of relocation in 2013 at the start of HDP. Maryland responded that it considered the individual an "inmate" during HDP term and therefore did not seek transfer.
Maryland describes HDP, enacted by its legislature in 1990, as a program allowing eligible incarcerated individuals to serve the end of their sentences in the community under electronic monitoring, telephonic verification, and random checks by correctional staff. Florida disputes Maryland's characterization, asserting that individuals in HDP meet the Compact's definition of a "supervised individual," and therefore require transfer when relocating with at least ninety days remaining in the program. Florida also notes that, if subject to the Compact, its supervision officers would conduct the required field contacts.

Applicable Rules

Rule 1.101, Definitions:

> *'Supervised Individual' means an "offender" defined by Article II of the Interstate Compact for Adult Offender Supervision 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 Compact."*
>
> *'Supervision' means the oversight exercised by authorities of a sending or receiving state over a supervised individual for a period of time determined by a court or releasing authority, during which time the supervised individual is required to report to or be monitored by supervising authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the supervised individual at the time of release to the community or during the period of supervision in the community.*

Rule 2.106 Supervised Individuals Subject to Deferred Sentences:

(a) Supervised individuals subject to deferred sentences are eligible for transfer of supervision provided that all other criteria for transfer, as specified in Rule 3.101 (a), (b), and (c) have been satisfied and the:

1. supervised individual has waived their right to trial and entered plea of guilt or no contest, and
2. plea has been accepted by the court.

(b) Persons subject to supervision pursuant to a pre-trial release program, bail, or similar program are not eligible for transfer under the terms and conditions of this compact.

Analysis

The individual at issue was convicted of a criminal offense and released to the community under conditions of Maryland's HDP, which includes electronic monitoring, voice verification, and random checks. This case clearly involves an adult "convicted of a criminal offense and released to the community" under the terms of his sentence. These conditions and the HDP's clear requirements that individuals be "monitored by supervising authorities" meet the Compact's definitions of a "supervised individual" and "supervision" under Rule 1.101. Although Maryland characterizes HDP participants as "inmates," they are not incarcerated; rather, they remain in the community subject to court-ordered conditions that must be successfully completed as part of the sentence.

Eligibility under the Compact is not determined by a state's terminology, but is instead established by the actions of the sentencing court. *See* Advisory Opinion 06-2005 (Rule 2.106 applies here, we are considering the action actually taken by the supervised individual and the court rather than the label used by the legislature). Rule 2.106 makes clear that individuals remain eligible for Compact supervision when the court has entered a conviction (or accepted a plea) and imposes a conditional release, regardless of whether the sentence is suspended, stayed, or may later be dismissed or expunged upon program completion. *See also id.*

Because the individual in this case was convicted of a criminal offense and was conditionally released to the community under the terms of the sentence imposed by the court—which includes successful completion of two years in the HDP—he is a "supervised individual" for purposes of the Compact. This is further confirmed by the active oversight exercised over the individual within the program. Because of this compliance requirement, the individual in question is subject to the Compact and is required to seek transfer before relocating to Florida.

Conclusion

An individual convicted in Maryland and released to the community to complete HDP, or a comparable conditional-release program in another state, who relocates to another state with 90 days or more remaining in the program is subject to the Compact.

Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 1-2019
Issued: 2019-05-15
Revised: 2026-02-04

Requested by: Executive Committee

At Issue:

When a supervised individual is reported as an absconder and the receiving state closes the case under Rule 4.112(a)(2), questions arise if the individual is later apprehended in the receiving state. The Commission specifically seeks clarification on four discrete issues:

1. Whether Rule 4.112(b) applies when absconders are subject to retaking, or whether these should be treated as non-compact matters.
2. If the sending state withdraws its warrant or the individual is released, whether the receiving state must resume supervision?
3. Whether Rule 5.101-1 governs cases involving new charges in the receiving state.
4. Whether prosecutors and other authorities may use discretion in deciding whether to hold absconders without bond for retaking or to set bond for new charges.
5. What legal-liability considerations apply when reopening a compact case in ICOTS after the absconder is apprehended.

Advisory Opinion 1-2019

Issued by: Ashley H. Lippert, Executive Director & Richard L. Masters, Legal Counsel

Background

When a supervised individual absconds, the receiving state must submit a violation report requiring retaking and close supervision under Rule 4.112(a)(2) due to the individual's unknown whereabouts. If the individual is later apprehended, Rule 5.103-1 governs whether supervision may resume in the receiving state and outlines requirements for a probable-cause determination prior to retaking.

States vary in their practices regarding whether to reopen ICOTS cases following apprehension. Some reopen cases to document the individual's location, provide correspondence, submit probable-cause materials, or report new charges. These variations prompted the need for clarification on whether case reopening is required and how the relevant rules apply.

Applicable Rules and Statutes

***Rule 1.101 Definitions*:**

'Abscond' means:

(a) Supervision personnel are unable to establish contact or locate the supervised individual; and

(b) The supervised individual took action to make themselves unavailable for supervision and failed to comply with reporting requirements.

'Supervision' means the oversight exercised by authorities of a sending or receiving state over a supervised individual for a period of time determined by a court or releasing authority, during which time the supervised individual is required to report to or be monitored by supervising authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the supervised

individual at the time of release to the community or during the period of supervision in the community.

Rule 2.104 Forms

(a) States shall use the forms or electronic information system authorized by the commission.
(b) Section (a) shall not be construed to prohibit written, electronic or oral communication between compact offices.

Rule 4.112 Closing Supervision by the Receiving State

(a) The receiving state may close and cease supervision upon–

1. Discharge of supervision as determined by the sending state;
2. Notification to the sending state of the supervised individual's absconding from supervision in the receiving state;
3. Notification to the sending state that the supervised individual has been sentenced to incarceration for 180 calendar days or longer, including judgment and sentencing documents and information about the individual’s location;
4. Notification of death;
5. Return to sending state; or
6. Departure pursuant to a subsequent state transfer.

(b) A receiving state shall not terminate its supervision while the sending state is in the process of retaking the supervised individual.

Rule 5.101-1 Pending Felony or Violent Crime Charges

Notwithstanding any other rule, if a supervised individual is charged with a subsequent felony or violent crime, the individual shall not be retaken or ordered to return until criminal charges have been dismissed, sentence has been satisfied, or the individual has been released to supervision for the subsequent offense, unless the sending and receiving states mutually agree to the retaking or return.

Rule 5.103-1 Retaking Absconders

(a) If a supervised individual who has absconded is apprehended in the receiving state on a warrant issued by the sending state, and the apprehension occurs within 30 calendar days of the warrant's issuance, the sending state is not required to retake the individual, provided both the sending and receiving states mutually agree.

(b) If a supervised individual who has absconded is apprehended within the jurisdiction of the receiving state on a warrant issued by a sending state, and more than 30 calendar days have passed since the warrant was issued or the sending and receiving states did not mutually agree under subsection (a), the receiving state shall establish probable cause as outlined in Rule 5.108.

(c) When determined that a supervised individual who has absconded requires retaking and probable cause is established pursuant to Rule 5.108, the sending state shall retake the supervised individual from the receiving state.

(d) The sending state shall keep its warrant and detainer in place until the supervised individual is retaken pursuant to subsection (c) or supervision is resumed pursuant to subsection (a).

Rule 5.106 Sending State Transport and Authority During Retaking:

(a) Officers authorized under the laws of a sending state may enter any compact state to take custody of a supervised individual, provided they adhere to this compact, its rules, due process requirements, and confirm both their authority and the individual’s identity.

(b) Member states shall allow officers authorized by the laws of the sending or receiving state to transport supervised individuals through the state without interference.

(c) Officers authorized by the laws of a sending state may take custody of a supervised individual from a local, state or federal correctional facility at the expiration of the period of confinement or the individual's release from that facility provided that:

1. No detainer has been placed against the supervised individual by the state in which the correctional facility lies; and
2. No extradition proceedings have been initiated against the supervised individual by a third–party jurisdiction.

Analysis

1. Does Rule 4.112(b) apply when absconders are subject to retaking, or should these be considered "non-compact" matters?

Rule 4.112(b) does not determine whether an individual remains subject to the Compact. Except where the sending state has discharged supervision under Rule 4.112(a)(1), absconders remain Compact cases, regardless of where they are apprehended. Article I of the Compact and Rule 5.106 authorize sending-state officers to enter any Compacting State to apprehend and retake the individual.

Because these cases remain under Compact authority, the receiving state must document the individual's location, status, and subsequent case actions within ICOTS. Rule 2.104(a) reinforces this obligation by requiring states to use "the forms or electronic information system authorized by the Commission," which includes ICOTS. While Rule 2.104(b) permits supplementary communication through other means, it does not abrogate the requirement to document official Compact activity through ICOTS.

2. Must the sending state resume supervision?

Because Rule 4.112(b) does not determine Compact applicability, withdrawing a warrant does not remove the case from the Compact's authority. Absent the sending state's determination to retake the individual, the receiving state should resume supervision under the sending state's sentencing order until either retaking occurs or supervision is formally discharged.

3. Whether Rule 5.101-1 controls cases involving new charges in the receiving state.

Absent mutual agreement among the sending and receiving states respectively, Rule 5.101-1 applies when the absconder has pending charges in the receiving state. Accordingly, the individual should not be retaken or ordered to return until either the charges are dismissed, the sentence for the new office is satisfied, or the individual is released to supervision for the new offense.

4. Whether prosecutors or law enforcement may exercise discretion when determining whether to hold or detain absconders without bond for retaking or to set bond for new charges.

Receiving state prosecutors and supervising authorities retain full discretion under their own laws to determine whether to hold a supervised individual without bond or to release the individual on bond for the new criminal charges. But this discretion applies solely to the new offense in the receiving state.

With that said, ICAOS Rules provide that detention for the purpose of retaking may occur only when the supervised individual becomes available under Rule 5.101-1. That Rule expressly permits the sending and receiving states to mutually agree to retaking despite pending charges, but absent such agreement, retaking and compact detention must await satisfaction of the rule's "availability criteria."

5. Liability concerns for reopening ICOTS cases upon apprehension

As a general matter, parole and probation officers enjoy qualified immunity if their actions are in furtherance of a statutory duty and in substantial compliance with the directives of superiors and relevant statutory or regulatory guidelines. This immunity requires only that an officer's conduct be in substantial compliance with the directives of superiors and regulatory procedures. Taggart v. States, 822 P.2d 243 (Wash. 1992). Whether a government official may be held personally liable for an allegedly unlawful act turns on the "objective legal reasonableness" of the action in light of the legal rules that were "clearly established" at the time. Anderson v. Creighton, 483 U.S. 635, 639 (1987) (referring to Harlow v. Fitzgerald, 457 U.S. 800, 818-19 (1982)).

Because the Compact and ICAOS Rules continue to apply to cases involving absconders and detailed above, failure to follow Compact procedures, including reopening ICOTS cases when required, may potentially increase legal exposure. Rule 2.104 reinforces that states must use ICOTS as the authorized system for documenting and processing Compact cases. Though additional communication is permitted, it does not abrogate the obligation to record official actions in ICOTS. Properly reopening the ICOTS case and documenting all actions therefore supports compliance and reduces legal risk for receiving-state authorities.

Conclusion

1. Absconders who are later apprehended in the receiving state remain subject to the Compact unless the sending state has formally discharged supervision under Rule 4.112(a)(1). When this occurs, the receiving state should reopen the ICOTS case to document the individual's status, location, related correspondence, and any probable-cause materials.
2. If the sending state withdraws its warrant or the individual is released by local authorities, the receiving state must resume supervision consistent with the original sentencing order.
3. When new charges exist, Rule 5.101-1 applies, and retaking may not occur until the individual becomes available, unless both states mutually agree otherwise.
4. Prosecutors and supervising authorities may exercise discretion regarding detention decisions.
5. Reopening ICOTS cases in these circumstances aligns with ICAOS rules and supports compliance, which mitigates liability concerns for receiving-state officials.