



**Interstate Commission
for Adult Offender Supervision
ADVISORY OPINION**

**Opinion Number: 2-2007
Issued: 2007-05-09**

Requested by: New Jersey
At Issue: Offenders in Federal Housing

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

Background

The State of New Jersey has requested clarification of certain federal statutes, rules, and regulations as they pertain to offenders who seek to transfer to another state under the Interstate Compact for Adult Offender Supervision and who intend to reside in housing subsidized by the federal government (commonly referred to as "Section 8 housing"). Specifically certain states are taking the position that the transfer of any such offender under the Compact is precluded as failing to meet the requirement of a "valid plan of supervision" under Compact [Rule 3.101](#) (b) solely by virtue of the offender's intention to reside in federally subsidized housing under Section 8 of the Federal Housing Code.

The federal regulations in question strictly prohibit only two (2) classes of offenders from relocating into Section 8 housing: 1) sex offenders who are required to register for life, and 2) offenders convicted of drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing [See 24 C.F.R., Section 960.204(a)(3), and 42 U.S.C., Section 13663(a)].

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.

Analysis and Conclusion

With the limited exceptions listed in the federal regulations prohibiting residence in Section 8 housing for sex offenders and those convicted of the manufacture or production of methamphetamine on the premises of federally assisted housing, offenders are otherwise eligible to reside in Section 8 housing. The provisions of Compact Rule 3.101 do not provide a per se prohibition of the transfer of an otherwise eligible offender under the Compact. The receiving state therefore has an obligation to investigate and substantiate that the offender (other than sex offenders and those convicted of the manufacture or production of methamphetamine) would not be permitted to reside in a particular housing development in order to deny a transfer based on this fact alone. In *ICAOS v. Tennessee Board of Probation & Parole (U.S. Dist. Ct., E. Dist. of KY, 04- 526-KSF (2005))*, the Court made reference to the mandatory criteria in Rule 3.101 in rendering its decision that a receiving state cannot add special conditions or requirements prior to the acceptance of transfer under 3.101. Similarly, a receiving state is not authorized to deny a transfer of an offender based solely on the fact that the offender intends to reside in Section 8 housing. Denial of transfer on this basis, with the exception of sex offenders and those convicted of the manufacture or production of methamphetamine, is tantamount to adding a special condition or requirement prior to the acceptance of transfer in violation of ICAOS Rule 3.101.

Summary

A receiving state is not authorized to deny a transfer of an offender based solely on the fact that the offender intends to reside in Section 8 housing. Denial of transfer on this basis, with the exception of sex offenders and those convicted of the manufacture or production of methamphetamine, is tantamount to adding a special condition or requirement prior to the acceptance of transfer in violation of ICAOS Rule 3.101.