



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

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

Requested by: Oklahoma

At Issue: Are offenders who are not eligible to transfer under the provisions of Rule 3.101 (a) or Rule 2.105 of the Rules of the Interstate Compact for Adult Offender Supervision permitted to transfer under Rule 3.101 (c) as a discretionary transfer?

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

Background:

Pursuant to [Rule 6.101](#) Oklahoma is requesting an Advisory Opinion on whether offenders who are not eligible to transfer under the provisions of [Rule 3.101](#) (a) or [Rule 2.105](#) of the Rules of the Interstate Compact for Adult Offender Supervision be permitted to transfer under Rule 3.101 (c) as a discretionary transfer

Applicable Rules & Statute

Article I of the Interstate Compact for Adult Offender Supervision provides that, "The compacting state recognize that there is no 'right' of any offender to live in another state . . ." [Rule 2.110](#) provides that "No state shall permit a person who is eligible for transfer under this Compact to relocate to another state except as provided by the Interstate Compact for Adult Offender Supervision and these rules." These provisions support the view of the states as expressed in the Compact and the rules that to the extent offenders (both by offense and the fact that they are subject to some form of supervision), are subject to the Compact, they should not be permitted to transfer except in accordance with its rules

There are offenders subject to supervision, as that term is defined and interpreted under the Compact, who are not eligible for mandatory transfer because of the nature of their offense or the residency and employment status of the offender or the offender's family. Such offenders would ordinarily be confined to the sentencing state. However, Rule 3.101 (c) provides that "A receiving state, for good cause shown, may consent to the transfer of supervision of an offender who does not otherwise qualify for transfer of supervision." This rule presumes that any such offender is already under supervision within the meaning of the ICAOS and its rules, but is otherwise disqualified due to the nature of the offense, or failure to qualify for transfer of supervision under the mandatory provisions of 3.101(a). Rule 3.101(c) provides a safety valve by providing a means for otherwise ineligible offenders to seek transfer of their supervision when in the opinion of both the sending *and* receiving state the interests of justice, public safety and rehabilitation would be served by such a transfer.

Analysis & Conclusion

Based on the provisions of the Compact and the rules as discussed above, an offender who is under supervision as that term is defined by the Compact and the rules but who is disqualified based on the nature of the offense or the failure to satisfy the eligibility criteria of Rule 3.101 (a) is nevertheless eligible for transfer of supervision under Rule 3.101 (c) as a discretionary transfer.