



**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.