

INTERSTATE COMMISSION FOR
ADULT OFFENDER SUPERVISION

BENCH BOOK

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TABLE OF CONTENTS

	Introduction to the Benchbook
	Acknowlegements
1	Chapter 1 - Interstate Compact for Adult Offender Supervision
1.1	1.1 History of the Interstate Compact for Probation and Parole (ICPP)
1.2	1.2 Why the Interstate Compact for Adult Offender Supervision
1.3	1.3 General Principle that Supervised Individuals Do Not Have a Right to Interstate Travel
1.4	1.4 Historical Development of the ICAOS
1.5	1.5 Effect of the ICAOS on the States
1.6	1.6 Adoption of ICAOS and Withdrawal from ICAOS
1.7	1.7 Effect of Withdrawal
1.8	1.8 Key Features of ICAOS
1.9	1.9 Key Definitions in the ICAOS
1.10	1.10 Primary Powers of the Commission
1.11	1.11 Rulemaking Authority of the Commission
1.12	1.12 Advisory Opinions, White Papers, and Other Technical Assistance of the Interstate Commission
1.13	1.13 Enforcement of the Compact and its Rules (Art. IX & Art. XII)
1.13.1	1.13.1 Administrative Enforcement by the Commission
1.13.2	1.13.2 Judicial Enforcement by the Commission
2	Chapter 2 - Eligibility Under the ICAOS
2.1	2.1 Key Compact Authorities and References
2.2	2.2 Eligibility Under the ICAOS
2.3	2.3 Individuals Eligible for Transfer Under the ICAOS
2.4	2.4 Individuals Not Eligible for Transfer Under the ICAOS
2.5	2.5 Sentencing Considerations
2.5.1	2.5.1 Deferred Sentencing
2.5.2	2.5.2 Deferred Prosecution
2.6	2.6 Misdemeanor Eligibility
2.7	2.7 Special Considerations: Out-of-State Treatment
3	Chapter 3 - Transfer of Supervision Under the ICAOS
3.1	3.1 Mandatory Transfer of Supervised Individuals
3.1.1	3.1.1 Special Rules for Military Personnel and Their Families
3.1.2	3.1.2 Employment Transfers of Supervised Individuals and Their Families
3.2	3.2 Discretionary Transfer of Supervised Individuals
3.3	3.3 Transfer of Supervision of Sex Offenders
3.4	3.4 The ICAOS Transfer Process
3.4.1	3.4.1 Time of Transfer
3.4.1.1	3.4.1.1 Expedited Transfers
3.4.1.2	3.4.1.2 Reporting Instructions for Supervised Individuals Living in the Receiving State
3.4.2	3.4.2 Pre-Acceptance Testing
3.4.2.1	3.4.2.1 Disabled Supervised Individuals
3.4.2.2	3.4.2.2 Continuing Jurisdiction over Supervised Individuals Between the Sending & Receiving States
3.4.3	3.4.3 Post-Acceptance Testing
4	Chapter 4 - Supervision in Receiving State
4.1	4.1 Duration of Supervision
4.1.1	4.1.1 Type of Supervision in Receiving State
4.1.2.1	4.1.2.1 Disabled Supervised Individuals
4.1.2.2	4.1.2.2 Continuing Jurisdiction over Supervised Individuals Between the Sending and Receiving States
4.2	4.2 Other Considerations
4.2.1	4.2.1 Post-Transfer Change in the Underlying Circumstances Justifying the Transfer
4.2.2	4.2.2 Travel Permits
4.2.3	4.2.3 Victims' Rights
4.3	4.3 Conditions
4.3.1	4.3.1 Conditions by the Receiving State
4.3.2	4.3.2 Conditions by the Sending State
4.3.3	4.3.3 Sex Offender Registration
4.4	4.4 Financial Obligations
4.4.1	4.4.1 Restitution

4.4.2	4.4.2 Fees by the Sending and Receiving States
4.5	4.5 Implications, Health Insurance Portability and Accountability Act of 1996 (HIPAA)
4.7.3.2.2	4.7.3.2.2 Probable Cause Hearing Report
5	Chapter 5 - Retaking (Returning Supervised Individuals to the Sending State)
5.1	5.1 Status of Supervised Individuals Subject to ICAOS
5.2	5.2 Waiver of Formal Extradition Proceedings
5.2.1.1	5.2.1.1 No Statutory Right under ICAOS Itself
5.2.1.2	5.2.1.2 Constitutional Violations Related to ICAOS
5.2.1.3	5.2.1.3 No Supervisor Liability under Section 1983
5.2.1.4	5.2.1.4 No Substitute for Appeal or Habeas Corpus
5.2.1.5	5.2.1.5 Official Capacity versus Individual Capacity
5.2.1.6	5.2.1.6 Persons Acting under Color of Law
5.3	5.3 Uniform Extradition Act Considerations
5.4	5.4 Retaking
5.4.1	5.4.1 Exceptions to Discretionary Retaking
5.4.1.1	5.4.1.1 Rule 5.102 - Retaking Following a Felony or Violent Crime Conviction
5.4.1.2	5.4.1.2 Rule 5.103 - Retaking Based on Behavior Requiring Retaking
5.4.1.3	5.4.1.3 Reporting Obligation - 30-day Requirement
5.4.2	5.4.2 Procedural Authority and Due Process in Retaking
5.5	5.5 Arrest and Detention of Supervised Individuals in the Receiving State
5.5.1	5.5.1 Circumstances Authorizing Arrest and Detention
5.5.2	5.5.2 Authority to Arrest and Detain Under ICAOS Rules
5.6	5.6 Disposition of New Crime Convictions or Violations Occurring Outside the Sending State
5.6.1	5.6.1 Remote Hearings Under the Compact
5.7	5.7 Arrest of Absconders
5.7.1	5.7.1 Arrest of a Supervised Person Who Fails to Return to the Sending State as Ordered
5.8	5.8 Requirements for a Probable Cause Hearing
5.8.1	5.8.1 When a Probable Cause Hearing is Not Required
5.8.2	5.8.2 Probable Cause Hearing Waiver
5.8.3	5.8.3 Due Process Rights in a Probable Cause Hearing
5.8.4	5.8.4 Where the Probable Cause Hearing Must be Held
5.8.5	5.8.5 Prompt Probable Cause Hearing
5.8.6	5.8.6 Supervised Individual's Basic Rights at a Probable Cause Hearing
5.8.6.1	5.8.6.1 Supervised Individuals Right to Counsel
5.8.7	5.8.7 Probable Cause Hearing Report
5.8.8	5.8.8 Relationship Between a Probable Cause Hearing and Other ICAOS Rules Regarding Retaking and Conditions
5.8.9	5.8.9 Post Probable Cause Hearing
5.9	5.9 Bail Pending Return
5.10	5.10 Revocation or Punitive Action by the Sending State - Conditions
6	Chapter 6 - Liability and Immunity Considerations for Judicial Officers and Employees
6.1	6.1 Overview of Legal Risk
6.2	6.2 State Accountability for Noncompliance with Compact
6.2.1	6.2.1 ICAOS as Binding Federal Law
6.2.2	6.2.2 Commission Enforcement Authority
6.2.3	6.2.3 Conduct That May Trigger Enforcement
6.2.4	6.2.4 Role of Courts and Executive Agencies
6.3	6.3 Private Litigation Arising from Compact Supervision
6.3.1	6.3.1 No Private Right of Action Under ICAOS
6.3.2	6.3.2 Constitutional Claims (42 U.S.C. § 1983)
6.3.3	6.3.3 State Tort Claims
6.3.4	6.3.4 No Statutory Right Under ICAOS Itself
6.3.4.1	6.3.4.1 Constitutional Violations Related to ICAOS
6.3.4.2	6.3.4.2 No Supervisor Liability Under Section 1983
6.4	6.4 Tort Claims by Supervised Individuals
6.4.1	6.4.1 Tort Claims by Others
6.4.2	6.4.2 Claims Under the Compact Itself
6.5	6.5 Immunity Doctrines and Related Defenses
6.5.1	6.5.1 Eleventh Amendment Immunity
6.5.2	6.5.2 State Sovereign Immunity
6.5.3	6.5.3 Immunity in Another State's Court
6.5.4	6.5.4 Judicial Immunity
6.5.5	6.5.5 Qualified Immunity
7	Chapter 7 General Law of Interstate Compacts
7.1	7.1 Who Must Comply with an Interstate Compact?

7.2 7.2 Nature of Interstate Compacts
7.2.1 7.2.1 Interstate Compacts are Formal Agreements Between States
7.2.2 7.2.2 Compacts Are Not Uniform Laws
7.2.3 7.2.3 Compacts Are Not Administrative Agreements
7.3 7.3. Delegation of State Authority to an Interstate Commission
7.4 7.4 Congressional Consent Requirement
7.4.1 7.4.1 When Consent is Required
7.4.2 7.4.2 Withdrawal and Modification of Congressional Consent
7.4.3 7.4.3 Implications of Congressional Consent
7.5 7.5 Interpretations of Interstate Compacts
7.6 7.6 Application of State Law that Conflicts with an Interstate Compact
7.7 7.7 Special Considerations for Litigation Involving Interstate Compacts
7.7.1 7.7.1 Relief Must Be Consistent with the Compact
7.7.2 7.7.2 Eleventh Amendment Issues for Interstate Commissions
7.8 7.8 Party State, Interstate Commission, and Third-Party Enforcement of Compacts
7.9 7.9 Recommended Sources of Compact Law and Information

Introduction to the Benchbook

This Bench Book exists as a resource for judges, court staff, and for compact administrators. The Interstate Compact for Adult Offender Supervision (ICAOS) is the current interstate compact between the states governing the movement of supervised individuals. A prior interstate compact, the Interstate Compact for the Supervision of Parolees and Probationers (ICPP), was first enacted in 1937, and governed movement of supervised individuals until 2002, when the current compact became effective. The Interstate Commission first drafted this Bench Book in 2005 and updates it regularly to incorporate new commission rules, advisory opinions, white papers, court decisions, and best practices in the implementation of ICAOS.

This Bench Book provides an overview of the ICAOS and explains the commission's rules, advisory opinions, white papers, and court decisions that interpret and apply the ICAOS. Since the inception of the ICAOS, there have been hundreds of court decisions that mention the states' use of the ICAOS, but surprisingly few have interpreted the compact and the commission's rules. This welcome dearth of judicial interpretation is a testament to the drafters of the compact providing clear authority and standards; the many members and leaders of the interstate commission over the years; the commission's staff and legal counsel in maintaining clear rules, advisory opinions, white papers, and informal advice to the states; and, of course, to the work of the states in thoughtfully implementing the compact and commission's rules.

This Bench Book also includes an overview of legal principles for interstate compacts. This important section of the Bench Book provides context for understanding the ICAOS as a single law of all the states, and for its interpretation, and application. One important principle is that a court should consider the decisions from other courts that involve the same legal issue to ensure a single interpretation of the ICAOS. Having multiple different interpretations of the same provision in the ICAOS or the commission's rules would be dysfunctional to the states and supervised individuals, which would not know which interpretation to apply.

Many court decisions cite to this Bench Book as guidance or persuasive authority. We have reviewed those decisions with an eye toward learning what courts value in this resource and updating and adding new content that we believe courts will find useful and to help ensure a

continued uniform application of the ICAOS among the states and territories. *E.g., Iwanicki v. Pa. Parole Bd.*, No. 97 D.C. 2024, 2025 Pa. Commw. Unpub. LEXIS 275, at *19, n.16, *21, *22–23 (Pa. Commw. Ct. June 4, 2025); *McGrew v. City of Portland*, No. 3:23-cv-01082-HZ, 2024 WL 326597 (Jan. 24, 2024); *Longson v. Nebraska*, No. 4:18CV3036, 2018 U.S. Dist. LEXIS 46874, at *2 n.3 (D. Neb. Mar. 22, 2018); *State v. Brown*, 140 A.3d 768, 776, 777 n.6 (R.I. 2016); *Goe v. Comm'r of Prob.*, 46 N.E.3d 997, 1002–03 (Mass. 2016).

We offer a few notes here about the Bench Book that we believe are important for its users.

- The Bench Book cites to many court decisions that involve the prior ICPP. This is intentional. The overall goal and purpose of the ICAOS of streamlining movement of supervised individuals has not changed from the ICPP. The ICPP decisions cited here involve principles that remain relevant to the ICAOS or provide historical context for the purpose in which an ICPP case is cited. Generally, court decisions prior to 2003 involve the ICPP, decisions in the mid-2000s may involve either the ICPP or the ICAOS, and decisions beginning in the late-2000s generally involve only the ICAOS.
- The Bench Book cites many unreported decisions involving the ICAOS, ICPP, and related law. These decisions provide important illustrations and examples even if they are not binding, especially because there are few cases that interpret the ICAOS and the commission's rules. Additionally, court rules differ concerning the citation of unreported cases, so courts that allow such citation may review and decide the precedential value of such decisions.
- The Bench Book necessarily cites to decisions of many different courts—federal, state, and territorial. As explained in the overview of interstate compact law, a court that needs to interpret or apply a provision of the ICAOS or the commission's rules should be familiar with the way that other courts have interpreted or applied the same provision to ensure a uniform application of the compact throughout the 50 states, the District of Columbia, and the territories that have enacted the compact.

Acknowlegements

The Interstate Commission for Adult Offender Supervision extends its sincere appreciation to the many individuals whose expertise and commitment made this Bench Book possible. This resource reflects a collaborative effort to provide judges and practitioners with clear, practical guidance for navigating the Interstate Compact.

We are especially grateful to the authors who contributed their time, insight, and subject-matter expertise to develop content that is both legally sound and relevant to today's courtroom realities. Their work ensures this Bench Book remains a meaningful and accessible reference for those handling Compact cases.

We also thank the reviewers who thoughtfully evaluated each chapter, strengthening the overall quality, clarity, and consistency of the material. Their careful attention to detail and dedication to accuracy have enhanced the usefulness of this publication.

The Commission is fortunate to benefit from the contributions of respected legal professionals and practitioners who bring deep knowledge of interstate compact law and its application. We extend our appreciation to:

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Finally, we recognize the ongoing efforts of Commission members, staff, and stakeholders across the country who continue to support the effective implementation of the Compact. Their

dedication to collaboration and public safety is reflected throughout this work.

Chapter 1 - Interstate Compact for Adult Offender Supervision

The ICAOS and the commission's rules are binding law in all member states. The ICAOS is a contract between the states and having received the consent of Congress, it is federal law. The discussion of interstate compact law in Chapter 6 explains these long-held principles. Article XIV.A states that all state laws that conflict with the compact are superseded to the extent that they conflict with the ICAOS. Articles V and XIV.B further specify that the rules adopted by the commission have the force and effect of statutory law. Consequently, all courts and executive agencies must take all necessary measures to enforce their application. For example, in *Scott v. Commonwealth*, 676 S.E.2d 343, 346 (Va. Ct. App. 2009), the Virginia court was not required to give full faith and credit to an Ohio trial court judgment when the ICAOS required Virginia, not Ohio, to adjudicate his Virginia probation violation. Failure of state judicial or executive branch officials to comply with the terms of the compact and its rules would result in the state defaulting on its contractual obligations under the compact and could lead the commission to take corrective or punitive action, including a suit in federal court for injunctive relief as specified in Article XII.C of the ICAOS.

PRACTICE NOTE

No court can order relief that conflicts with the terms and conditions of the compact or the rules established by the commission. This principle also applies to state court enforcement of the compact as federal law under the Supremacy Clause.

1.1 History of the Interstate Compact for Probation and Parole (ICPP)

In 1934, Congress authorized the creation of interstate compacts on crime control, which led to the 1937 Interstate Compact for the Supervision of Parolees and Probationers. Also referred to as the Interstate Compact for Probation and Parole or the Uniform Law on the Supervision of Probationers and Parolees (hereafter “ICPP”). In 1934, Congress granted the following consent:

(a) The consent of Congress is hereby given to any two or more States to enter into agreements or Compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and Compacts.

(b) For the purpose of this section, the term “States” means the several States and Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia.

This consent is commonly called the Crime Control Consent Act and is codified at 4 U.S.C. § 112 (2024). This consent, given to the states in advance of any compact being in place, was the basis of not only the ICPP, but also other compacts such as the Interstate Juvenile Compact and the Interstate Compact for Adult Offender Supervision. *See Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95, 99 n.1 (3d Cir. 2008) (acknowledging this statute as consent to the ICPP and the ICAOS).

Prior to the adoption of the ICPP, there was no formal means for controlling the interstate movement of probationers and parolees. In many circumstances, courts and paroling authorities exercised discretion regarding a supervised individual’s permission to engage in interstate travel or relocation. Often, a receiving state obtained little or no notice of a supervised individual’s relocation, supervision of an individual in the receiving state was uncertain, and there was no formal and easy method for return of supervised persons who violated the terms of their supervision. The ICPP was the primary mechanism for regulating interstate movement until it was succeeded by the ICAOS.

1.2 Why the Interstate Compact for Adult Offender Supervision

Defined in Article I, the purpose of the compact 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; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving state; and to equitably distribute the costs, benefits, and obligations of the Compact among the Compacting states.

The absence of a supervised person's right to reside or be supervised outside the sentencing jurisdiction (*see § 1.3 infra*) has important implications for managing the interstate placement and return of supervised individuals. Sending and receiving states retain broad discretion in determining both transfer and return. The ICAOS manages that discretion.

The ICAOS provides the exclusive framework governing interstate supervision of individuals subject to conditional release or community supervision. Accordingly, it controls decisions regarding where such individuals may reside under supervision, as well as their return to the sending state. *See Goe v. Comm'r of Prob.*, 46 N.E.3d 997, 1002 (Mass. 2016) ("The compact is the exclusive means to transfer supervision from one State to another" (citing ICAOS Rule 2.110 (a))).

The intent of the ICAOS is not to dictate judicial sentencing or place restrictions on the court's discretion relative to sentencing. *See Scott v. Commonwealth*, 676 S.E.2d 343, 347 (Va. Ct. App. 2009). The ICAOS contains no provisions directing judges on sentencing in particular cases and it does not alter individual state sentencing laws, although the ICAOS may alter how those laws affect transfer decisions under the compact. See, e.g., ICAOS Advisory Opinion 6-2005 (deferred prosecution) & ICAOS Advisory Opinion 7-2006 (second offense DUI). The ICAOS only comes into play when a supervised individual seeks to transfer their supervision to another state.

If part of complying with a judge's sentence would require or permit travel or relocation to another state, the rules of the ICAOS may apply. When applicable, those rules would be binding on state officials in both the sending and receiving states.

Similar to its application relative to the courts, the ICAOS does not govern the underlying decisions of a parole board, except when those decisions involve travel or relocation to another

state. If the parole board authorizes such travel or relocation, the ICAOS rules apply and guide the actions of officials in both states. However, the ICAOS does not regulate the transfer of incarcerated individuals to serve their confinement in another state; such transfers may be governed by the Interstate Corrections Compact, the Western Interstate Corrections Compact, or the New England Interstate Corrections Compact.

PRACTICE NOTE

The ICAOS does not constrain the discretion of courts or parole authorities in the sending state regarding the nature of the sentence or conditions imposed on a supervised individual. Such limitations are typically governed by state law. The ICAOS becomes pertinent for courts and parole authorities when a supervised individual travels to or relocates in a state other than the one that issued the sentence or conditions.

1.3 General Principle that Supervised Individuals Do Not Have a Right to Interstate Travel

As a general principle, convicted persons enjoy no right to interstate travel or a constitutionally protected interest to supervision in another state. Federal and state courts have grounded this proposition in limitations in the right to travel outside the sentencing jurisdiction, public safety priorities, and correctional resource management. Federal cases discussing this principle include: *Morrissey v. Brewer*, 408 U.S. 471, 478, 480 (1972) ("conditions [of parole] restrict [a parolee's] activities substantially beyond the ordinary restrictions imposed by law on an individual citizen"; parolees do not enjoy "the absolute liberty to which every citizen is entitled, but only . . . conditional liberty properly dependent on observance of special parole restrictions"). *Jones v. Helms*, 452 U.S. 412, 418-20 (1981) (a person who has committed an offense punishable by imprisonment does not have an unqualified right to leave the jurisdiction prior to arrest or conviction); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987) (following *Morrissey*); *U.S. v. Knights*, 534 U.S. 112, 119 (2001) ("Just as other punishments for criminal convictions curtail an offender's freedoms, a court granting probation may impose reasonable conditions that deprive the individual of some freedoms enjoyed by law-abiding citizens."); *Wilkinson v. Austin*, 545 U.S. 209, 228-30 (2005) (inmates may have protected due process interests, but state's interests in public safety and management of scarce resources are dominant considerations owed great deference). *See also Hyser v. Reed*, 318 F.2d 225, 239 (D.C. Cir. 1963) (en banc) (while paroled, the supervised individual is a convicted person who is being "field tested" toward rehabilitation; therefore, one cannot compare the supervised individual's rights in this posture with rights before conviction); *United States v. Warren*, 186 F.3d 358, 366 (3d Cir. 1999) ("Standard conditions of probation include restrictions on a defendant's right to travel" (citing 18 U.S.C. § 3563(b)(13) & (14)); *Alonzo v. Rozanski*, 808 F.2d 637, 638 (7th Cir. 1986) (no liberty or property interest to live in another state); *Williams v. Wisconsin*, 336 F.3d 576, 581 (7th Cir. 2003) (convicted persons have no right to control where they live in the United States; the right to travel is extinguished for the entire balance of their sentences); *Bagley v. Harvey*, 718 F.2d 921, 924 (9th Cir. 1983) (same).

PRACTICE NOTE

Supervised individuals do not have a constitutional right to relocate. Sending states have no

obligation to allow a supervised individual to travel to or relocate to another state. Except as outlined in the ICAOS and its rules, member states are not obligated to assume jurisdiction and supervision over individuals from other states. The process for relocating and the responsibilities of states to approve or accept such relocations are governed by federal law and interstate agreements like the ICAOS.

1.4 Historical Development of the ICAOS

The ICAOS was written to remedy longstanding deficiencies and legal ambiguities under the Interstate Compact for the Supervision of Parolees and Probationers (ICPP). Chief among these were:

- Lack of compliance with the ICPP's terms and conditions by member states;
- Absence of enforcement authority, as the ICPP provided no mechanism to compel state adherence, and the enforcement tools created by the Parole and Probation Compact Administrators' Association (PPCAA) proved limited and legally uncertain;
- Doubt about the PPCAA's authority, including whether its members could properly be considered "like officials" authorized to promulgate binding rules under the ICPP;
- State statutory conflicts, as legislatures increasingly enacted laws inconsistent with the Compact due to perceived failures in its administration. For example, Colorado enacted legislation restricting the entry of nonresident supervised individuals without prior Compact approval (Colo. Rev. Stat. § 17-27.1-101(3)(b) (2002)), expressly citing inadequate oversight under the ICPP; see also *Doe v. Ward*, 124 F. Supp. 2d 900, 916 (W.D. Pa. 2000) (striking down Pennsylvania's attempt to impose stricter conditions on out-of-state offenders); and
- Uncertainty over scope and coverage, particularly as alternative sentencing practices, such as deferred or suspended sentences and diversion programs, expanded beyond what the ICPP's definitions contemplated.

These shortcomings highlighted the need for a modernized compact with clear rulemaking authority, national governance, and enforceable standards, culminating in the drafting and adoption of the ICAOS in 2002. The ICAOS directly addressed these deficiencies by establishing a structured framework with defined eligibility standards, centralized oversight through the commission, uniform rulemaking authority, and enforceable compliance mechanisms. Courts should therefore interpret the ICAOS consistent with its remedial purpose to ensure uniform interstate supervision and prevent the unilateral state actions and legal uncertainty that undermined the prior compact.

1.5 Effect of the ICAOS on the States

As discussed in § 1.1, the ICAOS received advanced congressional consent pursuant to 4 U.S.C. § 112 (2024). Accordingly, as discussed in *§ 1.11 infra*, the agreement created a compact that must be construed as federal law, enforceable on member states through the Supremacy Clause and the Compacts Clause of the U.S. Constitution. Consequently, member states may not act unilaterally to alter the terms and conditions of the agreement. Section 1 discusses how state law that conflicts with or attempts to supersede the ICAOS would be unenforceable to the extent of the conflict. Additionally, Article XII(A) and Article XIV(B) require state executive bodies and courts to give full force and effect to the Compact. For example, a state parole board may not impose terms and conditions on parolees from other states that exceed or attempt to override the requirements set by the Interstate Commission.

PRACTICE NOTE

A distinctive feature of the ICAOS among Compacts is the impact that rules adopted by the Interstate Commission have on state law. The ICAOS explicitly grants the Interstate Commission the authority to adopt rules necessary to fulfill the agreement's objectives. According to the Compact's provisions, these rules hold the force of statutory law and are binding on the Compacting states. Scott v. Commonwealth, 676 S.E.2d 343, 346 (Va. App. 2009). A state law, court rule, or regulation that contradicts or attempts to contravene the rules of the Interstate Commission may be invalid to the extent of the conflict. Art. V, Powers & Duties of the Interstate Commission.

1.6 Adoption of ICAOS and Withdrawal from ICAOS

Like other interstate compacts, the ICAOS inaugurated when state legislatures enacted statutes that adopted the provisions of the agreement. For the ICAOS, the compact required adoption by thirty-five states to become active. All 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands have adopted the ICAOS. The following are citations to each state's codified law, verified as of January 2026 through each state legislature's website:

Alabama

Alaska

Arizona

Arkansas

California

Colorado

Connecticut

Delaware

District of Columbia

Florida

Georgia

Hawaii

Idaho

Illinois

Indiana

Iowa

Kansas

Kentucky

Louisiana

Maine

Maryland

Massachusetts

Michigan

Minnesota

Mississippi

Missouri

Montana

Nebraska

Nevada

New Hampshire

New Jersey

New Mexico

New York

North Carolina

North Dakota

Ohio

Oklahoma

Oregon

Pennsylvania

Puerto Rico

Rhode Island

South Carolina

South Dakota

Tennessee

Texas

Utah

Vermont

Virginia

Virgin Islands

Washington

West Virginia

Wisconsin

Wyoming

Ala. Code § 15-22-1.1

Alaska Stat. § 33.36.100

Ariz. Rev. Stat. § 31-467

Ark. Code Ann. § 12-51-101

Cal. Penal Code § 11180

Colo. Rev. Stat. § 24-60-2802

Conn. Gen. Stat. § 54-133

Del. Code Ann. tit. 11, § 4358

D.C. Code § 24-133(b)(2)(J)

Fla. Stat. Ann. § 949.07

Ga. Code Ann. § 42-9-81

Haw. Rev. Stat. § 353B-1

Idaho Code § 20-301

45 Ill. Comp. Stat. 170/5

Ind. Code § 11-13-4.5-1

Iowa Code § 907B.2

Kan. Stat. Ann. § 22-4110

Ky. Rev. Stat. Ann. § 439-561

La. Rev. Stat. Ann. §§ 15:574.31 – 15:574.44

Me. Rev. Stat. Ann. tit. 34-A, §§ 9871 – 9884

Md. Code Ann. Corr. Servs. §§ 6-201 – 6-215

Mass. Gen. Laws ch 127, §§ 151A – 151N

Mich. Comp. Laws § 3-1012

Minn. Stat. Ann. § 243.1605

Miss. Code Ann. § 47-7-81

Mo. Rev. Stat. §§ 589.500 – 589.569

Mont. Code Ann. § 46-23-1115

Neb. Rev. Stat. § 29-2640

Nev. Rev. Stat. § 213.215

N.H. Rev. Stat. Ann. §§ 651-A:26 – 651-A:38

N.J. Stat. Ann. §§ 2A:168-26 – 2A:168-39

N.M. Stat. Ann. § 31-5-20

N.Y. Exec. Law § 259-mm

N.C. Gen. Stat. § 148-65.5

N.D. Cent. Code § 12-65-01

Ohio Rev. Code § 5149-21

Okla. Stat. tit. 22, § 1093

Or. Rev. Stat. § 144.600

61 Pa. Cons. Stat. § 7112

P.R. Laws Ann. tit. 4, §§ 1433 – 1446

R.I. Gen. Laws Ann. § 13-9.1-1.3

S.C. Code Ann. § 24-21-1100

S.D. Codified Laws § 24-16A-1

Tenn. Code Ann. § 40-28-401

Texas Gov’t Code Ann. § 510.017

Utah Code Ann. § 77-28c-103

Vt. Stat. Ann. tit. 28, §§ 1351 – 1364

Va. Code Ann. §§ 53.1-176.2

V.I. Code Ann. tit. 5, §§ 4633 – 4645

Wash. Rev. Code § 9.94A.745

W. Va. Code § 28-7-1

Wis. Stat. § 304-16

Wyo. Stat. Ann. § 7-13-423

Withdrawal from the Compact is permitted pursuant to Article XII, section A of the agreement. A state may withdraw by enacting a statute specifically repealing the agreement. The effective date of withdrawal is the effective date of the repeal, provided that repealing the agreement does not relieve a state of any pending financial obligations it may have to the Commission. Therefore, a state cannot avoid paying assessments, obligations or other liabilities, including any financial penalties imposed by the Commission or a court simply by repealing the agreement. Such obligations extend beyond the date of any repeal and are subject to judicial enforcement even after a state has withdrawn from the ICAOS.

1.7 Effect of Withdrawal

As discussed in §§ *1.2 and 1.3 supra*, supervised individuals do not have a constitutional right to travel, and states are not constitutionally required to accept supervised individuals from other states and the ICAOS is the sole mechanism by which states can regulate the interstate movement of adults under community supervision. A state that repeals the ICAOS forfeits its participation in this formal regulatory system. Without the compact, relocation decisions default entirely to each state's statutory framework and administrative discretion.

In practical terms, a non-member state could prohibit or severely restrict relocation by imposing conditions such as residency bans for individuals with certain offenses, mandatory in-state sentencing requirements, or supervision eligibility criteria that exclude nonresidents. For example, some states condition community supervision on the availability of approved housing or local treatment providers—requirements that could effectively preclude transfer from another jurisdiction absent compact protections. For example, Florida law requires an approved release plan before certain individuals may be released to community supervision. (Fla. Stat. § 947.1405 (Conditional Release Program)). Others maintain statutes that limit acceptance of individuals convicted elsewhere unless the receiving authority affirmatively contracts with the sending state. Such provisions, while lawful outside the compact, could functionally prohibit relocation into the non-member state. (See, Colo. Rev. Stat. § 17-27.1-101(3)(b) (2002)).

Participation in the ICAOS, therefore, guarantees a uniform process for interstate movement and ensures parity in supervision resources, access to services, and due process safeguards for out-of-state individuals. In contrast, non-participation exposes both sending and receiving jurisdictions to inconsistent legal treatment, potential liability, and unregulated population movement.

PRACTICE NOTE

In the absence of ICAOS membership, relocation of supervised individuals becomes subject solely to each state's statutory and administrative authority. States could, either intentionally or through existing statutory barriers (e.g., residency restrictions, supervision eligibility requirements, or mandatory local oversight provisions), effectively bar relocation from or to non-member jurisdictions. Practitioners should recognize that no uniform transfer process exists outside of the compact, and acceptance of supervision depends entirely on discretionary or

contractual arrangements between states.

1.8 Key Features of ICAOS

The ICAOS establishes a uniform and enforceable framework for regulating the interstate movement of adults under community supervision. Its key structural and functional features include:

Formal Governance Structure: Establishes an interstate commission composed of one commissioner from each member state, each vested with full voting authority on behalf of their respective state. The commission's decisions, rules, and policies are binding upon all member states. In addition, the commission includes non-voting ex officio members representing national stakeholder organizations such as the Conference of Chief Justices and the National Governors Association, crime victim advocates, and other entities with a vested interest in community supervision and public safety. The commission's rules for meeting are consistent with the principles of the federal Government in the Sunshine Act.

Rulemaking Authority: Grants the commission broad rulemaking power to promulgate rules that are binding in the member states and that govern all aspects of the interstate transfer and supervision process. Rulemaking is conducted pursuant to procedures that substantially conform to the principles of the federal Administrative Procedure Act and federal Advisory Committee Act, ensuring transparency, public participation, and legal uniformity among states.

Enforcement and Compliance Mechanisms: Authorizes the commission to monitor compliance, require corrective action plans, conduct remedial training, and impose fines or penalties on non-compliant states. In cases of persistent noncompliance, the commission may suspend or terminate a state's membership, ensuring accountability and adherence to compact rules. The commission's Compliance Committee, supported by audit and data oversight functions, systematically evaluates state performance.

State Council Requirement: Mandates that each member state establish a State Council for Interstate Adult Offender Supervision, including representatives from the executive, legislative, and judicial branches and victims' advocacy organizations. The purpose of the State Council is to coordinate intrastate compact operations, facilitate communication among agencies, and serve as a forum to resolve internal issues before escalation to the interstate commission.

Centralized Information System: Requires the operation of a national electronic data system to manage case transfers, track supervision activities, and support real-time information

exchange among member states, thereby promoting transparency, consistency, and data-driven oversight.

Public Safety and Accountability Framework: Embeds principles of public safety, victims' rights, and supervised individual accountability in its purpose and implementation, ensuring that the transfer of supervision between states does not compromise community protection and that all parties operate under uniform standards of due process and professional practice.

1.9 Key Definitions in the ICAOS

Article II of the ICAOS sets forth the definitions of key terms used throughout the compact. These defined terms govern interpretation of the compact and are applied consistently in the commission's rules, advisory opinions, and related guidance.

In 2024, the commission adopted the use of the term "supervised individual" in place of "offender," which appears in the original compact text. For purposes of interpretation, any reference to "offender" in the compact carries the same meaning as "supervised individual."

While Article II establishes the compact's core definitions, additional and clarifying definitions are set forth in ICAOS Rule 1.101. Where applicable, the statute and duly promulgated rules together control the meaning of defined terms.

1.10 Primary Powers of the Commission

Article III of the ICAOS specifies that the commission is a "body corporate and joint agency of the compacting states." The commission is an entity of all the member states acting together and is not an agency of any one state or of each state. The commission is engaged in public policy-making on behalf of the member states. This characterization as a corporate public body of the member states may have important liability considerations regarding the actions of the commission; for example, the commission may not be liable under one member state's law in the same manner as a state agency in that state.

Article V of the ICAOS specifies the powers of the commission. Among its primary powers, the commission:

- Promulgates rules, which are binding on the states and have the force and effect of statutory law within each member state;
- Oversees, supervises, and coordinates the interstate movement of supervised individuals subject to the Compact;
- Enforces compliance with all the Compact rules and terms;
- Creating mechanisms for resolving disputes between states;
- Coordinates the Commission's education, training, and awareness relative to supervised individual's interstate movement;
- Establishes uniform standards for reporting, collecting, and exchanging data; and,
- Performs other functions as necessary to achieve the purposes of the Compact.

1.11 Rulemaking Authority of the Commission

The commission's rulemaking authority is one of the most distinctive and far-reaching of its powers. Article V of the ICAOS specifies that the rules established by the commission have "the force and effect of statutory law and shall be binding in the compacting states" s and Article XIV provides that "[a]ll lawful actions of the Interstate Commission, including all Rules and Bylaws promulgated by the Interstate Commission, are binding upon the Compacting States." Courts recognize and enforce this principle of the ICAOS. *E.g., Interstate Comm'n for Adult Offender Supervision v. Tenn. Bd. of Probation and Parole*, No. 04-526-KSF (E.D. Ky. Apr. 1, 2005) (order granting preliminary injunction) (enforcing commission rule against state); *Scott v. Commonwealth*, 676 S.E.2d 343, 346 (Va. Ct. App. 2009) ("The Interstate Commission for Supervision of Adult Offenders ('the Commission' or 'ICAOS') was established by the Compact and has promulgated rules governing the transfer of supervision from a sending state to a receiving state as well as the return to or retaking by a sending state. See 2008 ICAOS Rules. The ICAOS Rules are binding in the compacting states and have the force and effect of law in Virginia and Ohio."); *Johnson v. State*, 957 N.E.2d 660, 663 (Ind. Ct. App. 2011); *Carmichael v. Pa. Parole Bd.*, 338 A.3d 275, 280 (Pa. Commw. Ct. 2025); *State v. Zimmerman*, No. 24-K-578, 2024 WL 5183218 (La. Ct. App. Dec. 20, 2024) ("Conflicts between compacting states' laws and Commission rules are resolved in favor of rules of the Commission").

Additionally, because the ICAOS has congressional consent, the compact has the force and effect of federal law and is binding on the states under both a Supremacy Clause analysis and a Contract Clause analysis, no state being able to impair the obligations of contracts including those entered into by the state itself. *M.F. v. N.Y. Exec. Dep't Div. of Parole*, 640 F.3d 491, 492, 494 (2d Cir. 2011); *State v. Brown*, 140 A.3d 768, 776 (R.I. 2016) (following *M.F.*). See also *Doe v. Pa. Bd. of Probation & Parole*, 513 F.3d 95, 103 (2008)[1] ("[A]pplying the factors set forth in *Cuyler v. Adams*, 449 U.S. 433, 442 (1981)," the Court held that the prior Interstate Compact for the Supervision of Parolees and Probationers, "as a congressionally-sanctioned interstate Compact is federal law."). . The federal law nature of the ICAOS may lend support to the enforceability of the commission's rules under federal preemption or supremacy principles. *E.g., Frontier Ditch Co. v. Se. Colo. Water Conservancy Dist.*, 761 P.2d 1117, 1123 (Colo. 1988); *Lake Tahoe Watercraft Recreation Ass'n v. Tahoe Reg'l Planning Agency*, 24 F. Supp. 2d 1062 (E.D. Cal. 1998).

In adopting rules, Article VIII of the ICAOS requires the commission to substantially comply

with the federal Administrative Procedure Act, 5. U.S.C. § 551, et seq., and specifically, the "Government in Sunshine Act," 5 U.S.C. § 552(b). Note that the ICAOS only specifies that the commission's rulemaking process must only *substantially comply* with the noted provision; the ICAOS does not specify that these laws directly apply to the commission, and these laws do not apply on their own terms because the commission is not a federal agency. *See, e.g., Zimmerly v. Columbia River Gorge Comm'n*, 663 F. Supp. 3d 1213, 1219 (W.D. Wash. 2023) (state Open Public Meetings Act does not apply to compact commission because the commission is not a state agency); *ZP#5, LLC v. Columbia River Gorge Comm'n,* No. 20-2-02402-06 (Clark Cty. Wash. Super. Ct. Mar. 24, 2023) (state's Open Public Meetings Act does not directly apply to compact commission where the compact requires commission to enact rules consistent with the more restrictive of states' laws). The Commission's rulemaking authority is also limited by Article VIII, which provides that, if a *majority* of state legislatures rejects a Commission rule by enacting a statute to that effect, the rule has no force or effect in *any* member state. A single state may not unilaterally reject a rule even if it adopts legislation to that effect.

The ICAOS specifically provides a mechanism by which a rule adopted by the Commission can be challenged. Under Article VIII, no later than sixty days after the promulgation of a rule, any interested party may file a petition in the United States District Court for the District of Columbia or the United States District Court in which the Commission has its principal offices (currently the United States District Court for the Eastern District of Kentucky) challenging the rule. Article VIII further specifies the standard of review—that the court can set aside a Commission rule if it is not supported by substantial evidence in the rulemaking record as defined by the Administrative Procedure Act, 5 U.S.C. § 551, et seq. (2004).

PRACTICE NOTE

Minor or technical deviations from the APA do not justify setting aside a properly promulgated rule. Although there are no ICAOS cases involving this issue, practitioners should consider cases involving the last directive of section 706 of the APA ("due account shall be taken of the rule of prejudicial error") and the Supreme Court's recognition of "harmless error" in APA cases, Nat'l Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 659-60 (2007).

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[1]This decision interpreted the former Interstate Compact for Probation and Parole (ICPP). The ICAOS replaced the ICPP in 2002, but courts continue to look to ICPP case law where its reasoning

is consistent with the current Compact’s structure and purpose.

1.12 Advisory Opinions, White Papers, and Other Technical Assistance of the Interstate Commission

Article XIV.B specifies, “Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the Compacting States, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.” Advisory opinions are drafted by the Executive Director with the assistance of counsel and approved by the Commission. They are intended to be lasting opinions, but several have been made obsolete by the enactment or clarification of rules addressing the same subjects of those opinions. In *Sconce v. California*, No. CV 14-2447-ODW(JC), 2017 WL 10573725, *7–8 (C.D. Cal. June 13, 2017), the court concluded that the petitioner could not seek an order from the court compelling the interstate commission to issue an advisory opinion where the order “would not resolve a case or controversy, but would merely determine a collateral legal issue for an aspect of a future petition going to whether the [receiving state] acted within its jurisdiction when it convicted and sentenced petitioner for violating his probation.”

This is an important authority that reduces conflict between the party states and enables the interstate commission to quickly address an issue outside of the rulemaking process, which occurs only annually. The interstate commission has issued more than three dozen advisory opinions and updates them as necessary to reflect amendments to rules or practice. Many courts have cited and followed the advisory opinions as persuasive authority, and occasionally a court encourages a state to seek an advisory opinion. *E.g., State v. Brown*, 140 A.3d 768, 779 n.8 (R.I. 2016). Other cases that have cited to the interstate commission’s advisory opinions include, *Tobey v. Chibucos*, Nos. 16-3927, 16-4037, 2018 U.S. App. LEXIS 12576 at *39 n.9 (7th Cir. May 15, 2018); *Goe v. Comm’r of Prob.*, 46 N.E.3d 997, 1005 (Mass. 2016), *Voerding v. Mahoney*, No. CV 09-73-H-DWM-RKS, 2010 U.S. Dist. LEXIS 32059, at *5 (D. Mont. Apr. 1, 2010); *In re Paul*, No. A-3905-08T2, 2010 N.J. Super. Unpub. LEXIS 1729, at *9 (N.J. Super. Ct. App. Div. Apr. 10, 2010); *Perry v. State*, No. 05-1757, 2008 U.S. Dist. LEXS 121014 (W.D. Pa. June 2, 2008).

Additionally, the interstate commission has issued several white papers. White papers are formal guidance documents that clarify legal authority, explain rule application, and address recurring compliance issues under the compact. While not rules, white papers provide authoritative interpretation and are intended to support consistent understanding and implementation of ICAOS requirements across member states.

1.13 Enforcement of the Compact and its Rules (Art. IX & Art. XII)

The commission's enforcement mechanisms in Articles IX and XII are other distinctive and far-reaching of its powers. These enforcement mechanisms are specifically intended to ensure that member states meet their contractual obligations by adhering to the compact's terms and any rules established by the commission. The commission's enforcement mechanisms are not aimed at compelling compliance from supervised individuals—that responsibility lies with the courts, paroling authorities, and corrections officials within each member state.

Enforcement action using these mechanisms may be triggered by a state's failure to appoint a commissioner or maintain an active state council, failure to pay required dues, failure to issue compact-compliant warrants, or improper discharge of a supervised individual in lieu of mandatory retaking.

1.13.1 Administrative Enforcement by the Commission

The commission possesses significant enforcement authority against states deemed in default of their obligations under the compact. The decision to impose a penalty for non-compliance rests with the commission as a whole or its executive committee acting on the commission’s behalf. The enforcement tools available to the commission include:

- Requiring remedial training;
- Mandating mediation or binding arbitration;
- Providing technical assistance;
- Imposing financial penalties on a non-compliant state;
- Suspending a non-compliant state;
- Termination from the Compact; and
- Initiating litigation to enforce the terms of the Compact, monetary penalties ordered by the Commission, or obtaining injunctive relief.

Grounds for default include but are not limited to a state’s failure to fulfill such obligations as are imposed by the terms of the Compact, its bylaws, or any duly promulgated rule.

1.13.2 Judicial Enforcement by the Commission

The Commission can initiate judicial enforcement by filing a complaint or petition in the appropriate U.S. district court. Article XII of the ICAOS and commission Rule 6.104 require a member state that loses in any such litigation is required to reimburse the Commission for the costs incurred in prosecuting or defending a suit, including reasonable attorney's fees.

An important provision of the ICAOS is Article IX, section A, which specifies that the commission is entitled to all service of process in any judicial or administrative proceeding in a member state pertaining to the subject of the compact where the proceedings may affect the powers, responsibilities or actions of the commission. This provision ensures that the commission may participate in cases that affect the commission. It is not clear what influence the failure to provide service to the commission would have on the enforceability of a judgment vis-à-vis the commission.

Chapter 2 - Eligibility Under the ICAOS

Chapter 2 of the Interstate Commission's rules establishes the foundational requirements governing eligibility for transfer under the Compact. These provisions define when a supervised individual qualifies for transfer, the obligations of sending and receiving states, and the procedural framework that controls interstate movement.

2.1 Key Compact Authorities and References

Determining whether the compact applies in a particular case begins with its defined terms. ICAOS Rule 1.101 establishes key definitions that govern eligibility and transfer decisions. Of particular importance to judicial authorities are the definitions of “supervision” and “supervised individual,” as these terms determine when an individual’s movement across state lines falls within compact jurisdiction. Proper application of these definitions is therefore essential.

Judges reviewing interstate transfer, violation, or retaking matters are encouraged to consult Rule 1.101 in conjunction with this Bench Book to ensure accurate application of ICAOS requirements.

The following references are available at www.interstatecompact.org:

- Rules of the Interstate Commission for Adult Offender Supervision
- Model Act, Interstate Compact for Adult Offender Supervision
- Bylaws for the Interstate Commission for Adult Offender Supervision
- Advisory Opinions of the Interstate Commission for Adult Offender Supervision
- Disclosures Permitted under HIPAA (45 C.F.R. § 164.512)

These resources provide the governing framework for interpreting and applying the compact.

2.2 Eligibility Under the ICAOS

Determining eligibility under the ICAOS involves a multi-faceted analysis, starting with the broad definition of a "supervised individual." According to Rule 1.101, a supervised individual is an adult who is placed under supervision due to a criminal offense and is released into the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, and who is required to request a transfer of supervision according to the terms of their supervision. Once an individual qualifies as a supervised individual under the Compact, eligibility for a transfer of supervision is assessed based on the nature of the offense and the specifics of the supervision.

In interpreting the definition of "supervised individual," the Commission has clarified that the type of supervision to be provided in the receiving state does not affect transfer eligibility. (See ICAOS Advisory Opinion 9-2004.) Additionally, due to the broad scope of the definition, the Compact encompasses individuals under the supervision of probation and parole officials, correctional departments, courts, related agencies, and private entities acting on behalf of these authorities.

PRACTICE NOTE

If a supervised individual does not meet the eligibility criteria, they are not subject to the ICAOS. Ineligibility may result from not meeting the definition of a supervised individual, not having committed an offense covered by the Compact, or not being under community supervision. Individuals outside the Compact's authority may, depending on the terms of their adjudication and a state's statutory and administrative framework, relocate across state lines without prior approval from the receiving state.

2.3 Individuals Eligible for Transfer Under the ICAOS

According to the Commission's definition of "supervised individual," the ICAOS can regulate a wide range of adults under supervision. An individual does not need to be on formal "probation" or "parole" to be eligible for transfer and supervision under the ICAOS. To qualify for an initial transfer of supervision under the ICAOS, the individual must (1) be under some form of community supervision, which can include supervision by a court, paroling authority, probation authority, treatment authority, or any person or agency providing supervision services under contract, and (2) have committed an offense covered by the Compact's rules.

Supervised individuals eligible for transfer of supervision under the ICAOS and its rules include:

- Those subject to traditional parole or probation, e.g., individuals found guilty and sentenced (Rule 1.101 "Supervised Individual");
- Those subject to deferred sentencing such as suspended imposition of sentences if some form of community supervision and/or reporting is a condition of the court's order (Rule 2.106);
- Those subject to deferred execution of sentence if some form of community supervision and/or reporting is a condition of the court's order (Rule 1.101 "Supervision");
- Those subject to other "non-standard" forms of disposition as determined by the Commission if some form of community supervision and/or reporting is a condition of the court's order (Rule 1.101 "Supervision");
- A juvenile treated as an adult by court order, statute, or operation of law;
- A misdemeanant provided they are subject to one year or more supervision and were convicted of one of the following offenses:
    - An offense resulting in direct physical or psychological harm to another person (See ICAOS Advisory Opinion 16-2006);
    - An offense involving the possession or use of a firearm (See ICAOS Advisory Opinion 1-2011);
    - A second or subsequent conviction of driving while impaired by drugs or alcohol (See

ICAOS Advisory Opinion 7-2006); or

- A sexual offense that requires the supervised individual to register as a sex offender under the laws of the sending state (Rule 2.105); and,

- Those subject to deferred prosecution programs, to the extent that participation in such programs requires the supervised individual to make material admissions of fact and waive all or some of their constitutional rights. (Rule 2.106; See ICAOS Advisory Opinion 6-2005.)

PRACTICE NOTE

Pursuant to Rule 2.110, with limited exception, no state may allow a person covered by the Compact to relocate to another state except as provided by the Compact and the commission's rules. Therefore, a court cannot order or direct an eligible supervised individual to leave a state and relocate to another state unless such relocation occurs in accordance with the Compact and the commission's rules.

2.4 Individuals Not Eligible for Transfer Under the ICAOS

Those not eligible for transfer of supervision under the ICAOS and its rules include:

- Supervised individuals on furlough or work release (Rule 2.107);
- Misdemeanants not subject to the qualifications contained in Rule 2.105;
- Non-criminals such as those convicted of infractions or subject to a civil penalty system, See *Commonwealth v. Amerson*, 706 S.E.2d 879, 884-85 (Va. 2011) (offenders convicted under Sexually Violent Predators Act (SVPA) ineligible for transfer under ICAOS because the act is civil, not criminal); and
- Juveniles who are not deemed "adults" for purposes of prosecution.

A supervised individual not eligible to have their supervision transferred to another state is not restricted in their travel, except as otherwise ordered by the sentencing court or by a state's statutory and administrative framework. See *Sanchez v. N.J. State Parole Bd.*, 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. If New York is willing to permit the change of residency, assuming the other criteria of ICAOS are met, we expect that New Jersey will cooperate fully to the extent and in the manner allowed by the laws of this state and the rules of ICAOS.")

Supervised individuals with three months or less of supervision or not subject to some form of community supervision are generally free to travel. This is in large measure because the duration of supervision does not warrant further consideration in the receiving state or because the nature of the offense is such that a court did not see continuing supervision as a necessary element of the sentence. For example, the Compact does not cover an individual convicted of a low-level misdemeanor offense and subject only to "bench probation" with no reporting requirements or conditions other than monetary conditions, the only requirement of which is to "go and commit no further offense." However, a court should not attempt to circumvent the Compact by placing a supervised individual on "unsupervised" status, particularly an individual who poses a public safety risk. Such an action would undermine the purpose of the Compact and could encourage other states to adopt similar practices, compromising the Compact's underlying principles. Placing a supervised individual on "bench probation" to circumvent the ICAOS poses a significant risk of additional harm to the community, especially if the individual is high risk.

PRACTICE NOTE

The ICAOS contains no provision authorizing “side agreements” between member states, thus the Compact is the only means for transfer of supervision.

2.5 Sentencing Considerations

The ICAOS applies to all individuals who meet the eligibility requirements and are subject to some form of community supervision or corrections. The term “supervised individual” is intentionally broad to accommodate changes in sentencing practices and manage supervised populations flexibly. As a result, whether a supervised individual is formally “sentenced” and subject to “probation” or “parole” is largely irrelevant. From the judiciary’s perspective the relevant inquiry in determining whether ICAOS is a factor centers on two considerations: (1) what did the court do, and (2) was the end consequence of the court’s action community supervision. In this way, the ICAOS applies in a broad range of cases and dispositions beyond traditional conviction followed by probation or parole.

The Commission does not regard provisions like “bench” probation as eligible for transfer under the ICAOS, as these are more akin to instructions such as “go and commit no further offenses.” The ICAOS envisions a more formal type of supervision, incorporating elements such as regular reporting and oversight. A sentence that merely instructs an individual to “commit no other offenses” without including supervision and reporting requirements does not establish a “supervision” relationship that triggers the ICAOS. However, if reporting requirements are imposed, even if only to the court, and all other eligibility criteria are met, the supervised individual may be subject to the ICAOS. This is particularly relevant when a court imposes probation that includes only treatment elements and reporting requirements, as such an individual may indeed fall under the ICAOS. See discussion, *infra at* 2.7.

2.5.1 Deferred Sentencing

In addition to traditional cases where an individual has been formally adjudicated and placed on supervision, the ICAOS also applies in certain deferred sentencing situations. Rule 2.106 provides:

(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 a 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.

The key factor under Rule 2.106 is whether the court has taken a formal judicial action establishing that the individual committed the offense, typically demonstrated when a plea of guilt or no contest has been entered and accepted. Once accepted, the individual is no longer in a pretrial status but is under a form of community supervision subject to the Compact's authority.

By contrast, individuals under pretrial release, bail, or diversionary programs, where no plea has been accepted, remain ineligible for transfer under the Compact.

Because state sentencing terminology varies widely (e.g., "deferred sentence," "suspended imposition," or "conditional discharge"), the substance of the court's action, not the terminology used, determines eligibility. Relying solely on state-specific terminology can lead to inconsistent application and disrupt the uniform enforcement of Compact rules. The determining question is whether a court of competent jurisdiction has made a finding or accepted a plea that the individual committed the offense.

PRACTICE NOTE

When evaluating eligibility under Rule 2.106, focus on the court's action, not the state's terminology. If the court has accepted a plea of guilt or no contest and placed the individual under community supervision, the case meets ICAOS eligibility criteria. However, if the individual remains in pretrial or diversionary status without an accepted plea, the Compact does not apply.

In addition to the nature of the adjudication, eligibility also depends on the nature of the supervision ordered. Rule 1.101 defines the term “supervision” as follows:

“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.

2.5.2 Deferred Prosecution

Some states use a sentencing alternative known as deferred prosecution. Authorized by state statute, this option allows an individual to admit or stipulate to the facts of the criminal conduct while prosecution is deferred pending completion of a treatment program or other court-ordered conditions. If the individual successfully fulfills these conditions, the case is typically dismissed and no judgment of conviction is entered. If the individual fails to comply, the court may enter a conviction and proceed with sentencing.

The question in such cases is whether the individual is a “supervised individual” covered by the ICAOS, given that no formal conviction exists and the individual appears to remain in a “pretrial” status. However, the Commission has interpreted the Compact’s rules to include certain deferred prosecutions.

As stated in Advisory Opinion 6-2005, the Commission found little practical difference between deferred prosecution and deferred sentencing. In both circumstances, the individual has admitted to the essential facts of the criminal conduct and is placed under court-ordered supervision. While a deferred prosecution may not involve a formal judgment or suspended sentence, the individual is no longer presumed innocent, having made a binding admission and accepted supervisory conditions. The Commission clarified that, in determining whether the Compact applies, states must focus on the court’s actions and the legal effect of the proceeding rather than the label assigned under state law:

> “In determining that Rule 2.106 applies to deferred prosecutions, we focus on the actual actions taken rather than the label used by the legislature.”

PRACTICE NOTE

When evaluating deferred prosecution cases, focus on the substance of judicial involvement and admissions made, not the terminology used by the state. If a court accepts factual admissions or requires a waiver of trial rights as a condition of supervision, the individual meets the criteria for ICAOS coverage under Rule 2.106 and Advisory Opinion 6-2005. Programs lacking court oversight or binding admissions remain pretrial and are not eligible for transfer. To determine whether an individual in a deferred prosecution program is subject to the Compact, courts should consider whether the individual has made material and binding factual admissions before a court establishing that the offense occurred; whether, upon violation, the individual is subject to conviction and sentencing without trial; and whether, as a condition of participation, the individual has waived substantive rights in future proceedings (e.g., to contest facts, confront witnesses, or present exculpatory evidence). If these elements are present, the individual is subject to ICAOS supervision. By contrast, a prosecutorial diversion program, administered without court involvement or binding admissions, generally falls outside the scope of the Compact.

2.6 Misdemeanor Eligibility

Rule 2.105 limits the types of misdemeanor cases eligible for transfer under the Compact. Unlike felony convictions, misdemeanor offenses are eligible only if they are subject to at least one (1) year of supervision and fall within one of the following categories:

- an offense in which a person has incurred direct or threatened physical or psychological harm;
- an offense that involves the use or possession of a firearm;
- a 2nd or subsequent misdemeanor conviction of driving while impaired by drugs or alcohol;
- a sexual offense that requires the supervised individual to register as a sex offender in the sending state.

Misdemeanor cases that do not fall within one of these four categories are not eligible for transfer under the Compact, regardless of the length or conditions of supervision. When determining whether a misdemeanor qualifies as an “physical or psychological harm,” states should look to the underlying conduct and statutory elements of the offense rather than relying solely on how the offense is labeled. Similarly, firearm-related misdemeanors qualify when the offense includes the use, possession, or discharge of a firearm as an element of the crime. Sexual misdemeanor offenses requiring registration in the sending state are also eligible, regardless of how the offense is otherwise classified.

As noted in ICAOS Advisory Opinion 7-2006, special attention must be given to second or subsequent misdemeanor DUI/DWI convictions. Because state laws vary in how repeat offenses are classified and sentenced, the commission considers the actual number of convictions, not how the offense is treated for sentencing purposes. Even if a court sentences a repeat DUI as if it were a first offense, the compact applies if it is factually a second or subsequent conviction.

Importantly, eligibility under Rule 2.105 does not eliminate the requirement that the supervised individual meet the transfer criteria under Rule 3.101. A qualifying misdemeanor must still satisfy supervision duration, substantial compliance, and valid plan requirements. Rule 2.105 reflects the commission’s intent to limit misdemeanor transfers to those offenses presenting elevated public safety concerns while excluding routine misdemeanor supervision from compact eligibility.

2.7 Special Considerations: Out-of-State Treatment

One area for potential confusion centers on the issue of treatment in lieu of supervision or treatment as supervision where a court defers sentencing and requires enrollment in a community-based or in-house treatment program in another state. Successful completion of the treatment program is commonly a condition of the supervision program. Such treatment programs may include drug treatment, mental health treatment, or sex offender treatment, to name a few. The difficulties with these programs arise when a supervised individual in one state is required to enroll in a treatment program only available in another state and whether such situations constitute circumstances that would trigger the ICAOS.

Supervised individuals placed in an out-of-state treatment program may trigger the requirements of the Compact, even if they are not subject to supervision by corrections officials. If the treatment program is a condition of release and includes requirements for progress reports to be submitted to the court, along with the possibility of probation revocation for non-compliance, it is sufficient to invoke the Compact and its rules.

An application for transfer based solely on enrollment in an out-of-state treatment program is a discretionary transfer under the Compact unless the supervised individual satisfies the mandatory eligibility criteria in Rule 3.101, such as residency, family relationships, and means of support. Courts should exercise caution when ordering placement in out-of-state programs, particularly for higher-risk individuals, even when the intended duration is brief (less than 30 days). Such sentencing practices may result in practical complications if the receiving state declines the discretionary transfer or if the program extends beyond the anticipated period (e.g., 45 days or more), thereby preventing the individual from fulfilling court-ordered treatment requirements.

Chapter 3 - Transfer of Supervision Under the ICAOS

Chapter 3 of the ICAOS rules govern the transfer of supervision between member states. These provisions establish when transfer is mandatory and when transfer may be discretionary, and they define the criteria, timelines, and procedural safeguards that apply in each circumstance.

3.1 Mandatory Transfer of Supervised Individuals

Transfers are classified into two categories, (1) mandatory acceptance and (2) discretionary acceptance.

Rule 3.101 governs mandatory transfer of supervision. Although this rule uses the term "mandatory," the rule also specifies that the authority to transfer a supervised individual to another state lies solely with the discretion of the sending state. See, e.g., *People v. Warren*, No. D084087, 2025 WL 2649533 (Cal. Ct. App. Sept. 16, 2025) (discussing a probation order that included a term that required the supervised individual to obtain the court's and probation officer's written consent before moving out of state). The supervised individual does not have a constitutional right to transfer their supervision to another state, even if otherwise eligible. Accordingly, Rule 3.101 should not be construed as creating any constitutionally protected right for a supervised individual to relocate. Rather, Rule 3.101 imposes an obligation on the receiving state to accept the individual for supervision *once the sending state has decided to transfer supervision*.

If a sending state decides to transfer supervision, and the supervised individual has three months or more or an indefinite period of supervision remaining, the receiving state must accept the transfer if the individual:

- Is in substantial compliance with a valid plan of supervision; and,
- Is a resident of the receiving state; or,
- Has resident family in the receiving state who has indicated (1) a willingness to assist in satisfying the plan of supervision, *and* (2) the supervised individual can obtain employment or has a means of support.

If a valid plan of supervision requires the supervised individual to demonstrate they have a means of economic support, failure to meet this obligation may result in the denial of transfer even if the individual satisfies the residence requirements. *See* ICAOS Advisory Opinion 8-2005 and Rule 1.101.

The intent of adding "substantial compliance" to the eligibility criteria is to prevent the transfer of supervised individuals who are not adhering to the terms and conditions of their supervision in the sending state. However, pending charges in the receiving state are irrelevant to the transfer decision when the issuing authority takes no action. Therefore, if the sending state does not act on these warrants or determines that the pending charges do not warrant revocation proceedings, the transfer application should not be rejected solely for this reason. Denying transfers on this basis alone unjustifiably prevents supervised individuals, who are residents of the receiving state, from transferring their supervision. *See* ICAOS Advisory Opinion 7-2004.

3.1.1 Special Rules for Military Personnel and Their Families

Rule 3.101-1 mandates that a receiving state shall accept supervision for three categories of military individuals: (1) military personnel, (2) family members living with military personnel; and (3) veterans for medical or mental health services. Military Personnel are eligible for reporting instructions and transfer through the ICAOS when they are under orders by the military to another state.

If a supervised individual resides with a family member who is in the military, their supervision is subject to transfer through the ICAOS if they:

1. have three months or more supervision remaining;
2. are in substantial compliance with the terms and conditions of their supervision;
3. have a valid plan of supervision;
4. can obtain employment in the receiving state or have a means of support;
5. are moving to another state with a family member who is under orders by the military; *and*
6. will be living with the family member who is subject to military orders.

Veterans referred for medical and/or mental health services in a receiving state by the Veterans Health Administration are eligible for transfer supervision if they:

1. have three months or more supervision remaining;
2. are in substantial compliance with the terms and conditions of their supervision;
3. have a valid plan of supervision; *and*
4. the sending state provides referral or acceptance documentation and is approved for care at the receiving state Veterans Health Administration.

3.1.2 – 3.1.2 Employment Transfers of Supervised Individuals and Their Families

Other circumstances in which a receiving state is mandated to accept supervision include the employment transfer of a supervised individual or the employment transfer of a family member with whom the supervised individual resides. Rule 3.101-1(a)(3) and (a)(4) covers such instances. A supervised individual is eligible to have supervision transferred to another state if they:

1. have three months or more of supervision remaining;
2. are in substantial compliance with the terms and conditions of their supervision;
3. have a valid plan of supervision; *and*,
4. are directed to transfer by the full-time employer of either the supervised individual or the supervised individual's family member as a condition of maintaining employment.

3.2 Discretionary Transfer of Supervised Individuals

Rule 3.101-2 governs the discretionary transfer of supervision. A receiving state can accept the transfer of a supervised individual who does not meet the mandatory acceptance criteria in Rules 3.101 and 3.101-1. *See* discussion, *supra* at 3.1. However, this acceptance is at the discretion of the receiving state under circumstances not covered by mandatory acceptance. For example, a supervised individual who is ineligible for mandatory transfer due to the nature of the offense or failure to meet residency and employment requirements may still be transferred under the discretionary provisions of the rules. *See* ICAOS Advisory Opinion 4-2005. Under such circumstances, transfer may be warranted when *in the opinion of both the sending and receiving states* such a transfer is in the interests of justice and rehabilitation. It must be emphasized, however, that a discretionary transfer requires the consent of both the sending state and receiving state.

PRACTICE NOTE

The discretion in Rule 3.101-2 allows a receiving state to consider individual circumstances, public safety interests, and resource capacity when evaluating whether transfer of supervision may be appropriate. The intent of this rule is to offer flexibility in cases where acceptance serves the spirit and objectives of the compact, even if not required by rule. For example, under Rule 3.101-2, a receiving state may accept a supervised individual with strong community ties or support from a non-family member, such as a mentor, educator, or treatment provider, when those supports promote rehabilitation and public safety, even if the case does not meet the mandatory family criteria.

The sending state must submit a transfer request along with all relevant information necessary for the receiving state to investigate and accept the transfer. Rule 3.107 specifies the information that must be provided to the receiving state prior to transfer.

With limited exceptions, a sending state *shall not allow* a supervised individual to relocate without the receiving state's explicit acceptance. *See* Rule 2.110. Allowing the supervised individual to relocate prior to acceptance may trigger two events:

1. the sending state shall order the supervised individual to return to the sending state, and
2. the receiving state can reject the placement, requiring a new transfer request.

See Rule 2.110 (a)(3); Practically, this means that no court or paroling authority may authorize a supervised individual to relocate before acceptance by the receiving state, unless the transfer of supervision is accomplished pursuant to expedited reporting instructions under Rules 3.101-1, 3.103, 3.103-1 and 3.103-2. *See* discussion *infra* § 3.4.1.

If a supervised individual is present in a receiving state without proper approval, the sending and receiving states are required to immediately notify one another. Upon confirmation of the unauthorized presence, the sending and receiving states may mutually agree to allow the supervised individual to temporarily remain in the receiving state and issue reporting instructions while a transfer investigation is completed. If no such agreement is reached, the sending state must order the supervised individual to return to the sending state within 15 business days. Following a failure of the individual to return, a nationwide warrant and retaking of the individual is required. *See* Rule 2.110 (a)(3).

3.3 Transfer of Supervision of Sex Offenders

The Commission recognizes that the interstate transfer of sex offenders presents unique challenges due to varying state laws governing sex offender registration, residency restrictions, and employment limitations. To address these complexities and promote accountability and public safety, Rules 3.101-3 and 3.103-3 establish specific procedures governing the transfer and supervision of sex offenders. These rules are intended to ensure uniform regulation of this population while facilitating the exchange of comprehensive information regarding the individual and the underlying offense.

Rule 3.101-3 prohibits travel outside the sending state pending submission and review of a transfer request for qualifying sex offenders. The sending state is required to provide any available additional information with the transfer request to assist the receiving state in assessing risk and determining appropriate supervision levels. To support these special considerations, Rule 1.101 defines "sex offender" as:

> [A]n 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 and who is registered or required to register as a sex offender in the sending or is under sex offender terms and conditions in the sending state and who is required to request transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision.

Rule 3.101-3 specifically provides exceptions to the procedures for issuing reporting instructions for sex offenders who meet the criteria of rules 3.103, 3.103-1 and 3.103-2. A qualifying sex offender may not leave the sending state before reporting instructions are issued; however, this restriction does not apply when the individual is already in the receiving state and the court conducts sentencing remotely. *See* White Paper – Legal Implications of Remote Hearings in Relation to ICAOS Rules. The receiving state is afforded five (5) business days to review the proposed residence and respond to the request for reporting instructions. Reporting instructions may be denied if similarly situated sex offenders sentenced in the receiving state would not be permitted to reside at that location.

PRACTICE NOTE

The Commission acknowledges that state laws vary regarding the criteria for classifying a person as a sex offender. Consequently, the definition of a sex offender in the Compact rules does not interfere with individual state definitions or registration requirements in a receiving state. Instead, it focuses on whether the supervised individual is required to register as a sex offender in the sending state or is being supervised as a sex offender.

3.4 The ICAOS Transfer Process

The ICAOS transfer process is initiated by sending state officials and includes submission of a transfer request, investigation by the receiving state, and a decision to approve or deny. A supervised individual may not physically relocate until the receiving state accepts the transfer and issues reporting instructions, except in limited expedited circumstances.

3.4.1 Time of Transfer

The Commission's rules can affect the time between the final disposition of a case and the supervised individual's ability to relocate to another state. Even when the supervised individual is eligible for transfer under the Compact, a court cannot authorize relocation until the receiving state has accepted supervision and issued reporting instructions in accordance with the rules. Accordingly, the supervised individual must remain subject to the authority of the sending state during the investigation and transfer process. Transfer requires investigation, acceptance, and the issuance of reporting instructions, even when the individual is a resident of the receiving state.

Rule 3.102 requires the sending state to send a transfer application and all pertinent information *prior to allowing the supervised individual to relocate* to the receiving state. Under Rule 3.104, the receiving state has up to 45 days to investigate and respond to a sending state's transfer request. There are provisions for emergency transfers to expedite reporting instructions. *See* Rule 3.103-2. As noted, Rule 3.103 provides limited exceptions when sentenced immediately to supervision or after a short jail sentence followed by supervision to restrictions on transfer prior to acceptance. In general, however, a probationer or parolee is not allowed to travel to a receiving state (unless for employment or medical purposes previously established prior to the transfer request) until the receiving state has investigated, accepted the transfer of the supervised individual, and issued reporting instructions. *See Rule 3.102*.

Rule 3.102 requires the sending state to submit a complete transfer application and all relevant case information to the receiving state before permitting a supervised individual to leave the sending state. Under Rule 3.104, the receiving state has up to 45 days to investigate and respond to the transfer request.

Rules 3.103, 3.103-1 and 3.103-2 provide narrow exceptions to the 45-day period in Rule 3.104. Rule 3.103-2 provides for expedited reporting instructions in limited circumstances where the sending state and receiving state agree that emergency circumstances exist. Rule 3.103 requires an expedited process for supervised individuals who live in the receiving state at the time of sentencing or after the disposition of a violation or revocation proceeding. These expedited transfers are discussed below in sections 3.4.1.1 and 3.4.1.2.

In the event the sending state fails to provide all needed information as required by Rule 3.107, the receiving state must reject the request and provide specific reason(s) for rejection. See Rule 3.104(b). Therefore, failure to transmit all necessary information when requesting a transfer may substantially delay the processing of the transfer request and such insufficiencies may result in a denial of a transfer by the receiving state.

For incarcerated individuals seeking to transfer their supervision upon release, Rule 3.105 stipulates that the sending state must submit a completed transfer request no earlier than 120 days before the individual's scheduled release from a correctional facility. This rule has been interpreted to mean that "the process for transferring parole to a sister state cannot be commenced until the inmate is given a release date." *In re Sauers*, (No H034179, 2010 WL 290584 at *9 n.6 (Cal. Ct. App. Jan 26, 2010). Although this case is unpublished, the commission concurs with this interpretation.

Rule 3.108 requires the sending state to notify known victims of a supervised individual of their right to be heard and comment when a transfer request is submitted to a receiving state. Pursuant to Rule 3.108-1, within one (1) business day of receiving reporting instructions or acceptance of transfer, the sending state shall initiate victim notification procedures in accordance with applicable state law informing the victim that the transfer will occur. Rule 3.108 further establishes procedures

3.4.1.1 Expedited Transfers

Rule 3.103-2 provides an “expedited” option, allowing a supervised individual to transfer supervision on a “pending acceptance” basis. To qualify for expedited reporting instructions, both the sending and receiving states must agree that an emergency justifies such a transfer. The receiving state must respond to a request for expedited reporting instructions no more than two (2) business days after receiving the sending state’s request, except Rule 3.103-3 extends the receiving state’s response to five (5) business days for sex offenders.

After obtaining the supervised individual’s signature on all required forms, the sending state shall issue a departure notice when the individual leaves the state. The issuance of expedited reporting instructions does not limit the receiving state’s authority to reject the transfer following full investigation.

3.4.1.2 Reporting Instructions for Supervised Individuals Living in the Receiving State

Rule 3.103 governs situations in which a supervised individual already resides in the receiving state at the time of sentencing or following the disposition of a violation or revocation proceeding. When the criteria of Rule 3.103 are met, the sending state may request reporting instructions to permit the individual to remain in or return to the receiving state while the transfer application is pending.

The request must include, at minimum, the individual's verified address and contact information along with documentation confirming residency in the receiving state at the time of sentencing or disposition.

The sending state must submit the request within 10 business days of sentencing, disposition of the violation or revocation proceeding, or release to supervision (if release occurs within ninety (90) days of sentencing). Upon receipt of a completed request, the receiving state shall issue reporting instructions within two (2) business days.

After reporting instructions are issued, the sending state shall submit the full transfer request within fifteen (15) business days. For sex offenders subject to Rule 3.101-3, the receiving state has up to five (5) business days to review the proposed residence and issue reporting instructions. Travel may not occur until reporting instructions have been issued.

Issuance of reporting instructions does not guarantee acceptance of the transfer. Following investigation under Rule 3.101, the receiving state may deny the transfer if the individual does not meet eligibility criteria, including the Compact's definition of "resident." If the transfer is denied, the supervised individual must return to the sending state.

3.4.2 Pre-Acceptance Testing

The receiving state may not require a supervised individual, who is otherwise eligible for transfer under Rule 3.101, to submit to psychological testing, treatment enrollment, or other evaluative conditions as a prerequisite to accepting the transfer. Imposing such “pre-acceptance” requirements adds conditions not authorized by the Compact or the Commission’s rules. See also ICAOS Advisory Opinion 5-2006 (Rule 3.101 does not permit a receiving state to place conditions and requirements on supervised individuals prior to transfer under the compact.)

3.4.2.1 Disabled Supervised Individuals

A receiving state is obligated to continue supervising individuals “who become mentally ill or exhibit signs of mental illness or who develop a physical disability while under supervision in the receiving state.” See *Rule 2.108*. Therefore, it would be impermissible for a receiving state to terminate supervision or to demand that a sending state retake an individual solely due to mental or physical disability.

3.4.2.2 Continuing Jurisdiction over Supervised Individuals Between the Sending & Receiving States

Transferring an individual's supervision through the Compact does not deprive the sending state of jurisdiction over the individual unless the record indicates that the sending state intended to relinquish jurisdiction. *See, e.g., Scott v. Virginia*, 676 S.E.2d 343, 347 (Va. App. 2009); *State v. Lemoine*, 831 P.2d 1345 (Kan. Ct. App. 1992). While the receiving state exercises jurisdiction over the individual for supervision purposes, the sending state retains jurisdiction for probation or parole revocation. See ICAOS *Advisory Opinion 3-2008*.

The Compact does not give the receiving state the authority to revoke the probation or parole imposed by authorities in a sending state, nor can a receiving state decide not to provide supervision once the individual transfers in accordance with the ICAOS rules. *See Scott v. Virginia* supra. at 347; *See also, Peppers v. State*, 696 So. 2d 444 (Fla. Dist. Ct. App. 1997). A receiving state may independently initiate criminal proceedings against supervised individuals who commit crimes while in that state. *See Rule 5.101-1*. However, the receiving state cannot revoke the probation or parole imposed by the sending state as part of the individual's conviction for these crimes. Additionally, 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.

3.4.3 Post-Acceptance Testing

Although a receiving state may not impose pre-acceptance conditions that impede transfer, nothing in the Compact prohibits a receiving state from imposing lawful supervision requirements after acceptance, provided those requirements apply equally to in-state and out-of-state supervised individuals. Once the receiving state accepts supervision pursuant to Rule 3.101 (or a discretionary transfer under Rule 3.101-2), it may require compliance with its generally applicable supervision standards, including sex offender registration, treatment participation, or psychological evaluation, if such requirements are imposed on similarly situated individuals supervised within the state.

A supervised individual's failure to comply with a receiving state's post-acceptance requirements could constitute grounds for retaking. *See Critelli v. Florida*, 962 So.2d 341 342-44 (Fl. Dist. Ct. App. 2007).

Chapter 4 - Supervision in Receiving State

Chapter 4 of the Interstate Commission's rules govern supervision once a receiving state accepts a supervised individual under the Compact. These provisions define the respective roles and responsibilities of the sending and receiving states, including supervision standards, reporting obligations, authority to impose conditions, violation response, and return procedures.

4.1 Duration of Supervision

When interpreting the ICAOS and its rules, eligibility for transfer depends on the nature of the offense, the sentence imposed, and the individual's supervision status, rather than the duration of supervision remaining under Rule 3.101. Rule 4.102 provides that "a receiving state shall supervise individuals transferred under the Interstate Compact for a length of time determined by the sending state." Accordingly, the length of supervision and any extensions fall within the exclusive authority of the sending state, and the receiving state must continue supervision until officially notified that supervision has expired or been terminated.

PRACTICE NOTE

Courts and supervising authorities should ensure that extensions of supervision are properly documented in the judgment or court order, clearly stating the statutory or rule-based authority and the reason for the extension (e.g., unpaid restitution, incomplete treatment, unresolved violations) and the new projected discharge date. Notice of the extension should be transmitted through the Commission's electronic information system as soon as practicable to allow the receiving state to adjust its case management timelines and maintain uninterrupted supervision. This ensures transparency, allows the receiving state to update case records and supervision plans, and prevents confusion regarding jurisdiction or compliance reporting. Failure to communicate extensions promptly can result in administrative errors, premature case closures, or noncompliance findings under the Compact.

Some states impose extended supervision terms, including lifetime or open-ended supervision programs such as "Community Supervision for Life" (CSL), frequently applicable to high-risk individuals and sex offenders. These sentencing structures may continue supervision long after other components of the sentence have concluded.

When individuals subject to extended supervision seek transfer under the compact, differences in state supervision frameworks may raise practical and legal questions for the receiving state, particularly where the receiving state does not employ an identical form of supervision. In such cases, the compact requires the receiving state to supervise the individual in a manner consistent with its own supervision standards while the sending state retains jurisdiction over the underlying sentence and its duration. See ICAOS Advisory Opinion 9-2004.

4.1.1 Type of Supervision in Receiving State

While the sending state has sole authority to determine the duration of supervision, whether through the court's sentence or by paroling authorities, the receiving state retains discretion over the type of supervision it will provide. Rule 4.101 requires the receiving state to supervise individuals transferred in a manner consistent with the supervision and risk level of other similarly sentenced individuals within its jurisdiction. As a result, there may be differences in the quality and nature of services provided by the sending state compared to those offered by the receiving state under its own rules and laws.

Under Rule 4.101, a receiving state must supervise transferred individuals in a manner consistent with similarly sentenced individuals in that state. This includes the level and intensity of supervision, access to rehabilitative programs, and the use of incentives and corrective actions. The rule ensures that out-of-state supervised individuals are not subject to disparate treatment or excluded from resources available to in-state individuals. As explained for the prior Interstate Compact for Probation and Parole in *Doe v. Pa. Bd. of Probation & Parole*, 513 F.3d 95, 108 (3d Cir. 2008), by joining the Compact, states agree to "approximate the same procedure and standards" for transferred individuals that apply to their own supervised population. A receiving state may impose conditions that support rehabilitation and public safety, provided those conditions are applied in the same manner as they are to similarly situated in-state individuals. The compact prohibits differential treatment based solely on an individual's transfer status.

Rule 3.101 reinforces that the sending state retains authority over the conditions of supervision and that receiving states may not use additional conditions or financial barriers to obstruct transfer or shift costs. *See Doe v. Ward*, 124 F. Supp. 2d 900, 915–16 (W.D. Pa. 2000) (invalidating state practices under the prior Interstate Compact for Probation and Parole that treated out-of-state individuals differently under "Megan's Law"). *See also* ICAOS Advisory Opinion 9-2004 (confirming that individuals under community supervision for life (CSL) remain eligible for transfer under the Compact if all requirements are met).

PRACTICE NOTE

Rule 4.101 requires that receiving states supervise Compact cases in the same manner as similarly sentenced in-state individuals. This includes applying the same risk assessment practices, supervision intensity, rehabilitative opportunities, and behavioral responses, such as incentives, corrective actions, and interventions. While receiving states must document their use of these techniques, they may not alter the supervision term or revoke conditional release, as those actions remain under the authority of the sending state.

4.1.2.1 Disabled Supervised Individuals

Rule 2.108 requires a receiving state to continue supervising individuals “who become mentally ill or exhibit signs of mental illness or who develop a physical disability while under supervision in the receiving state.” Therefore, it would be impermissible for a receiving state to terminate supervision or to demand that a sending state retake an individual solely due to the supervised individual developing a mental illness or physical disability after the original transfer.

4.1.2.2 Continuing Jurisdiction over Supervised Individuals Between the Sending and Receiving States

Transferring an individual's supervision through the Compact does not deprive the sending state of jurisdiction over the individual unless the record indicates that the sending state intended to relinquish jurisdiction. *See, e.g., Scott v. Commonwealth*, 676 S.E.2d 343, 347 (Va. App. 2009); *State v. Lemoine*, 831 P.2d 1345 (Kan. Ct. App. 1992)[2] . While the receiving state exercises jurisdiction over the individual for supervision purposes, the sending state retains jurisdiction for probation or parole revocation.

The Compact does not give the receiving state the authority to revoke the probation or parole imposed by authorities in a sending state, nor can a receiving state decide not to provide supervision once the individual transfers in accordance with the ICAOS rules. *See Scott*, 676 S.E.2d at 347; *Peppers v. State*, 696 So. 2d 444 (Fla. Dist. Ct. App. 1997)1. A receiving state may independently initiate criminal proceedings against a supervised individual who commits a crime while in that state. See Rule 5.101-1. However, the receiving state cannot revoke the probation or parole imposed by the sending state as part of the individual's conviction for these crimes. Additionally, 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.

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[2] This decision interpreted the former Interstate Compact for Probation and Parole (ICPP). The ICAOS replaced the ICPP in 2002, but courts continue to look to ICPP case law where its reasoning is consistent with the current Compact's structure and purpose.

4.2 Other Considerations

The section addresses post-transfer changes in circumstances, outlines requirements for travel permits, and emphasizes the Compact’s protections for victims, including timely notification and the opportunity to be heard throughout the transfer process.

4.2.1 Post-Transfer Change in the Underlying Circumstances Justifying the Transfer

Under the ICAOS, a change in the underlying circumstances that initially supported a transfer of supervision does not, by itself, require the sending state to retake a supervised individual when the transfer was accepted pursuant to the mandatory provisions of Rule 3.101 or Rule 3.101-1. However, different considerations may arise in discretionary transfers under Rule 3.101-2. Because discretionary transfers may involve individualized factors, the receiving state may impose lawful supervision conditions following acceptance pursuant to Rule 4.103. Failure to comply with the receiving state's conditions may result in grounds for retaking by the sending state as discussed in Chapter 5.

Any supervision conditions imposed by the receiving state, whether in mandatory or discretionary transfers, must be applied in a manner consistent with Rule 4.101 and reasonably related to legitimate supervision objectives, including rehabilitation and public safety. The Compact does not distinguish between mandatory and discretionary transfers with respect to the requirement that supervision conditions be reasonable and consistent with those imposed on similarly situated in-state individuals.

4.2.2 Travel Permits

Supervised individuals may be granted travel permits, which are defined in Rule 1.101 as “written permission granted to a supervised individual authorizing travel from one state to another.” Under Rule 4.111-1, a receiving state must notify the sending state prior to issuing a travel permit for travel to the sending state. The rule provides limited exceptions where advance notification is not required, including travel necessary for verified employment or medical purposes.

4.2.3 Victims' Rights

The ICAOS expressly recognizes and protects the rights of crime victims. Article I identifies, as a purpose of the Compact, the protection of victims' rights and the assurance of timely notice and opportunity for input. Article III authorizes representation from victim advocacy organizations within the Commission's governance structure. While the Compact statute articulates these principles broadly, the Commission's rules establish specific procedural obligations.

Under Rule 3.108-1, victims are entitled to notice when a supervised individual's reporting instructions are issued or the transfer is approved. The sending state must initiate victim notification procedures within one (1) business day after the receiving state issues reporting instructions or accepts the transfer, in accordance with applicable state law. Additionally, once an individual relocates, the receiving state shall respond to requests for information from the sending state within five (5) business days of receipt of the request.

Rule 3.108 further provides victims the opportunity to be heard and to express concerns regarding a proposed transfer or return. The obligation to notify victims of this right rests with the sending state's designated victim notification authority. Although the ICAOS rules do not prescribe the internal mechanism by which states coordinate this notification, effective implementation requires that courts, paroling authorities, and supervising agencies communicate with the appropriate victim notification authority to ensure compliance. Courts should remain mindful of the Compact's victim-related protections and the procedural requirements imposed by the Commission's rules to ensure that victims receive the notice and opportunity for input contemplated by the Compact.

4.3 Conditions

This section discusses the sending and receiving states' ability to impose conditions of supervision as well as sex offender registration requirements.

4.3.1 Conditions by the Receiving State

While a receiving state may be required to accept supervision when a supervised individual meets the eligibility criteria of the Compact, it retains authority to impose lawful supervision conditions after acceptance. However, that authority is limited by Rules 4.101 and 4.103. Rule 4.101(a) requires that a receiving state supervise transferred individuals in a manner consistent with the supervision and risk level applied to similarly sentenced in-state individuals. Accordingly, under Rule 4.103(a), the receiving state may impose only those conditions that it would impose on comparable individuals supervised within its own jurisdiction. *See Clancy v. Fla. Dep't of Corr.*. 782 Fed. Appx. 779, (11th Cir. 2019) (where third DUI was misdemeanor in the sending state but a felony in the receiving state, the receiving state could impose conditions consistent with felony status); *Karvey v. Ga. Dep't of Cmty. Supervision*, No. 2020CV333221, 2020 Ga. Super. LEXIS 2796, *8–9 (Fulton Cty. Super. Ct. Jan. 13, 2020) (receiving stae may impose conditions as long as such conditions would have been imposed on similar offenders in its state, even if those conditions would not have been imposed by the original state).

Two cases present different applications of this rule. In *Goe v. Comm'r of Prob.*, 46 N.E.3d 997 (Mass. 2016), the Supreme Judicial Court of Massachusetts relied on Massachusetts law, that "the probation department in Massachusetts may add a special condition only where a judge would have been required by law to impose that special condition on the defendant at sentencing; it may not impose a condition of probation that a sentencing judge simply had the discretion to impose." Id. at 1003. Thus, the Court concluded that a special condition imposed by the sending state judge for the probation department to use its judgment whether to require the supervised individual to submit to GPS monitoring was not required by law and the Massachusetts probation department could not impose a GPS monitoring condition pursuant to Rule 4.103(a). In *Commonwealth v. Castaneira*, 328 A.3d 1028, 1033 (Pa. Commw. Ct. 2024), the Pennsylvania court disagreed with the standard set in *Goe* for Rule 4.103(a), concluding that the rule does not dictate that a condition must or necessarily would have been applied in the sending state.

A receiving state may not impose additional or more restrictive conditions to avoid its obligations under the Compact, nor may it impose pre-acceptance conditions designed to impede or prevent transfer. Such actions, whether on a case-by-case basis or as a routine practice, violate the Commission's rules. Additionally, the timing and documentation of imposing these conditions and supervision techniques are critical to their validity. According to Rule 4.103, the receiving state may impose conditions only after acceptance.

Rule 4.103 requires the receiving state to notify the sending state of any conditions it intends to impose following acceptance of the transfer. Once the transfer is accepted, the receiving state can impose conditions consistent with its supervision standards and based on information obtained through permissible investigation. By applying for transfer under the Compact, the individual is subject to the supervision requirements of the receiving state, provided those requirements are applied in a manner consistent with similarly situated in-state individuals.

The receiving state may impose a condition after acceptance but before the supervised individual physically relocates to the receiving state. *See Warner v. McVey*, No. 08-55 Erie, 2010 WL 3239385 (W.D. Pa. July 9, 2010). A supervised individual accepted for transfer may refuse to comply with the conditions imposed by the receiving state; however, such refusal effectively bars the transfer and prevents the individual from relocating to the receiving state.

4.3.2 Conditions by the Sending State

A sending state may impose specific conditions on a supervised individual as part of a transfer request. However, the receiving state must have the opportunity to notify the sending state if it cannot comply with or enforce a particular condition. This issue is especially important for courts to consider. While a judge may order that a condition be fulfilled in the receiving state, that state may decline to enforce it if doing so is not feasible. When the receiving state cannot enforce a condition, the sending state must either (1) withdraw the condition and proceed with the transfer, or (2) withdraw the transfer request and retain supervision of the individual.

PRACTICE NOTE

Courts may not order a supervised individual to relocate to another state or condition supervision on leaving the sentencing jurisdiction without complying with the ICAOS. The compact does not permit a state to transfer supervision responsibility unilaterally through a sentencing order. Broad geographic exclusion or banishment conditions that effectively compel relocation to another state may conflict with the compact and undermine its uniform transfer framework.

4.3.3 Sex Offender Registration

Courts have generally upheld the application of sex offender registration requirements to individuals whose supervision transfers under the Interstate Compact, provided those requirements are applied in a nondiscriminatory manner. A receiving state may require a transferred individual to comply with its sex offender registration laws so long as the requirements imposed are the same as those applied to similarly situated in-state sex offenders.

In *Doe v. McVey*, 381 F. Supp. 2d 443, 451 (E.D. Pa. 2005) *aff'd sub nom*. *Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95 (3d Cir. 2008)[3], the court invalidated the application of Pennsylvania's Megan's Law to an out-of-state sex offender where the statute required automatic community notification for transferees but afforded in-state sex offenders a civil hearing to determine sexually violent predator status. The court held that imposing heightened registration consequences on out-of-state sex offenders without equivalent procedural protections violated the Equal Protection Clause.

Consistent with this principle, ICAOS Rules 4.101 and 4.103 require receiving states to supervise in a manner consistent with similarly situated in-state individuals. While a receiving state may enforce its registration requirements, it may not impose additional or more burdensome requirements solely because the individual was convicted in another state.

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[3]This decision interpreted the former Interstate Compact for Probation and Parole (ICPP). The ICAOS replaced the ICPP in 2002, but courts continue to look to ICPP case law where its reasoning is consistent with the current Compact's structure and purpose.

4.4 Financial Obligations

This section discusses authority and imposition of financial obligations and fees.

4.4.1 Restitution

The Interstate Compact does not alter the authority of the sentencing court to impose restitution or other financial obligations. The imposition, modification, and enforcement of restitution remain matters of the sending state's law and the sentencing court's jurisdiction. Rule 4.108 allocates responsibility for collecting fines, fees, costs, and restitution to the sending state. The receiving state's obligation is limited to notifying the supervised individual of any reported default and documenting noncompliance upon notice from the sending state. Failure to satisfy court-ordered financial obligations constitutes a breach of the supervision agreement, which can lead to the sending state retaking the supervised individual and revoking their probation or parole.

4.4.2 Fees by the Sending and Receiving States

Rule 4.107 permits the collection of fees from individuals subject to the compact. Specifically, Rule 4.107(a), allows the sending state to impose a transfer application fee, while Rule 4.107(b)(1) authorizes the receiving state to impose a supervision fee. Generally, such fees are established by state statutes or state administrative rules. *See Holloway v. Cline*, 154 P.3d 557 (Kan. App. 2007) (Imposition of a $25.00 per month interstate Compact supervision fee without providing a hearing before assessing such fee does not violate a supervised individual's constitutional rights to due process of law). Rule 4.107(b)(2) further specifies that once a supervised individual transfers supervision to a receiving state, the authority of a sending state to collect any type of supervision fee ceases, to the extent such fees are truly supervision fees.

PRACTICE NOTE

While a sending state may impose a supervision fee for the time the supervised individual is physically present in that state, it cannot continue to charge such a fee under the pretense of monitoring the individual's progress once they have moved to the receiving state.

A sending state may impose other fees on a supervised individual so long as those fees are not related to supervision. For example, a sending state could impose an annual fee on sex offenders so long as that fee had "no direct relationship to the supervision of such offenders." *See* ICAOS Advisory Opinion 14-2006. In this advisory opinion, the state statute at issue allowed for the collection of an annual fee from sex offenders to support the maintenance of the state's sex offender registry and victim notification systems. This fee was an annual assessment and was distinct from an ongoing supervision fee related to the active supervision of an individual. The advisory opinion concluded that the sending state could impose such a fee, and that it was solely responsible for collecting it and could not transfer this responsibility to the receiving state.

4.5 Implications, Health Insurance Portability and Accountability Act of 1996 (HIPAA)

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and rules promulgated pursuant thereto are intended to protect certain healthcare information from disclosure to authorized persons or entities. Generally, prior to disclosure of health care information, the holder of that information must obtain a release from the patient. HIPAA covers the disclosure of both physical and mental health care information. Thus, persons subject to transfer under ICAOS may have a protected privacy interest in certain health care information.

There is a law enforcement exception to the requirement to obtain a written release from a supervised individual prior to disclosure of protected health care information. *See* 45 C.F.R. 164.512(f)(1). Protected healthcare information may also be released pursuant to a court order. *See* 45 C.F.R. 164.512(f)(1)(ii) and is limited to the explicit terms of the order. *See* 45 C.F.R. 164.512(e)(1)(i). Additionally, providers may release protected health care information when such release is consistent with law and applicable ethical standards, including disclosure to law enforcement authorities when necessary to protect the public or an individual from serious imminent threat or to aid in the apprehension of an individual at large from lawful custody. *See* 45 C.F.R. 164.512(j)(1)(i) & (j)(1)(ii)(B). *See also*, 45 C.F.R. 164.512(k)(5).

The release of protected health care information must be strictly for law enforcement purposes and should not imply that supervised individuals forfeit their privacy rights regarding their health care data. Disclosure of protected information is permissible under HIPAA only when it is essential for the supervision of the individual. If the disclosure is more general and not directly related to a necessary aspect of supervision, it may violate HIPAA regulations. Therefore, before releasing protected health care information to authorities in another state, it is crucial to assess whether the release is essential for the individual's supervision or for ensuring public safety.

Although HIPAA may arise in the context of an interstate transfer, several courts have concluded that HIPAA does not provide either an explicit or implicit private right of action. One court having addressed HIPAA within the context of transferring medical records in the ICAOS context concluded that "I need not determine whether petitioner's allegations state a possible claim under this statute because the text of the statute does not provide a private right of action and two federal courts have concluded after thorough and persuasive analyses that no implied right of action exists." *O'Neal v. Coleman*, No. 06-C-243-C, 2006 WL 1706426, at *10 (W.D. Wis. June 16, 2006), citing *Johnson v. Quande*r, 370 F. Supp. 2d 79, 99-100 (D.D.C. 2005) and *Univ. of Colorado Hospital v. Denver Publishing Co.*, 340 F. Supp. 2d 1142, 1144-46 (D. Colo. 2004).

4.7.3.2.2 Probable Cause Hearing Report

Rule 5.108(e) requires the receiving state to prepare a written report of the hearing within 10 business days and to transmit the report along with any evidence or record from the hearing to the sending state. The report must contain (1) the time, date, and location of the hearing, (2) the parties present at the hearing, and (3) a concise summary of the testimony and evidence relied upon. Under Rule 5.108(e), even if the probable cause hearing results in exoneration of the supervised individual, the receiving state must transmit a report to the sending state.

PRACTICE NOTE: *Rule 5.108* requires the receiving state to prepare and transmit a report on the probable cause hearing to the sending state, despite any findings that the supervised individual did not commit the alleged violations of supervision.

It is important that Rule 5.108 be read in conjunction with other rules regarding retaking and conditions, since this may affect the outcome of the proceedings and the impact of subsequent proceedings in the sending state. At the conclusion of a hearing, the presiding official must determine whether probable cause exists, believing that the supervised individual committed the alleged violations of the conditions of their supervision. However, a determination made in a proceeding for mandatory retaking must be made in view of Rule 5.103(a). This rule provides, in part, that officials in the receiving state must show through documentation that the supervised individual has engaged in behavior requiring retaking. See Rule 5.103(a). To support the receiving state's request for mandatory retaking, as well as to provide a basis for subsequent proceedings in the sending state, which could result in revocation, the hearing officer in the receiving state should determine whether sufficient cause exists to conclude that the act or pattern of non-compliant behavior committed by the supervised individual is appropriately documented and deemed revocable. Behavior requiring retaking means "an act or pattern of non-compliance with conditions of supervision that could not be successfully addressed through the use of documented corrective action or graduated responses and would result in a request for revocation of supervision in the receiving state." See *Rule 1.101*.

If a hearing occurs based on violations of a condition imposed by the receiving or sending state, two considerations arise. First, the hearing officer must determine whether the supervised individual violated the conditions of supervision, e.g., the supervised individual indeed failed to comply with a condition. If the hearing officer so concludes, a second determination may need to be made. If the sending state notifies the receiving state of its intention to revoke probation or parole based upon the violation of a condition and requests a hearing, or if the receiving state intends to provide the sending state with a sufficient basis for revocation and voluntarily conducts such a hearing. Under Gagnon and Morrissey, the hearing officer must determine whether the violation is of sufficient nature that it would typically result in revocation in the receiving state. A hearing officer could conceivably find that the violation occurred, but that retaking is not warranted because it would not rise to the level of revocation in the receiving state. Two important points must be emphasized. First, the determination of the "likelihood of revocation" would not be conclusively binding on the sending state, as only the state granting conditional release has jurisdiction to make a final determination on revocation. *See Scott v. Virginia*, 676 S.E.2d 343, 347 (Va. App. 2009); Bills v. Shulsen, 700 P.2d 317 (Utah 1985); *State ex rel. Reddin v. Meekma*, 306 N.W.2d 664 (Wis. 1981). There is, nevertheless, a potential for conflicting conclusions between officials in the sending and receiving states regarding the severity of a violation and its implications.

Second, despite the fact that the determination of "likelihood of revocation" is based on the receiving state's standards, a sending state could conceivably obviate the need for a probable cause hearing by asserting that it has no intention of revoking

Chapter 5 - Retaking (Returning Supervised Individuals to the Sending State)

Chapter 5 of the Interstate Commission's rules govern how member states respond when a supervised individual violates the conditions of supervision while under Compact supervision. These provisions define when retaking is mandatory, when it is discretionary, and the procedural safeguards that apply, including notice, reporting, and probable cause requirements.

5.1 Status of Supervised Individuals Subject to ICAOS

A key objective of the ICAOS is to facilitate the effective transfer of supervised individuals between states and to manage their return to the sending state through mechanisms other than formal extradition. Consequently, a supervised individual's status as a convicted person significantly impacts the process they are entitled to under both the ICAOS and constitutional due process principles.

The U.S. Supreme Court has held that the granting of probation or parole is a privilege, not a right guaranteed by the Constitution. Probation or parole comes as an "act of grace" to one convicted of a crime and may be coupled with conditions that a state deems appropriate under the circumstances of a given case. *Escoe v. Zerbst*, 295 U.S. 490 (1935); *Burns v. United States*, 287 U.S. 216 (1932). Many state courts have similarly found that probation or parole is a "revocable privilege," an act of discretion. *See Wray v. State*, 472 So. 2d 1119 (Ala. 1985); *People v. Reyes*, 968 P.2d 445 (Cal. 1998); *People v. Ickler*, 877 P.2d 863 (Colo. 1994); *Carradine v. United States*, 420 A.2d 1385 (D.C. 1980); *Haiflich v. State*, 285 So. 2d 57 (Fla. Ct. App. 1973); *State v. Edelblute*, 424 P.2d 739 (Idaho 1967); *People v. Johns*, 795 N.E.2d 433 (Ill. Ct. App. 2003); *Johnson v. State*, 659 N.E.2d 194 (Ind. Ct. App. 1995); *State v. Billings*, 39 P.3d 682 (Kan. Ct. App. 2002); *State v. Malon*e, 403 So. 2d 1234 (La. 1981); *Wink v. State*, 563 A.2d 414 (Md. 1989); *People v. Moon*, 337 N.W.2d 293 (Mich. Ct. App.1983); *Smith v. State*, 580 So.2d 1221 (Miss. 1991); *State v. Brantley*, 353 S.W.2d 793 (Mo. 1962); *State v. Mendoza*, 579 P.2d 1255 (N.M. 1978). Probation or parole is a statutory privilege that is controlled by the legislature and rests within the sound discretion of a sentencing court or paroling authority. *See, e.g., People v. Main*, 152 Cal. App. 3d 686 (Cal. Ct. App. 1984). A supervised individual has no constitutional right to conditional release or early release. *See Greenholtz v. Inmates of Neb. Penal & Correctional Complex*, 442 U.S. 1, 7 (1979). Because there is no constitutional right, federal courts "recognize due process rights in an inmate only where the state has created a 'legitimate claim of entitlement' to some aspect of parole." *Vann v. Angelone*, 73 F.3d 519, 522 (4th Cir. 1996). *See also Furtick v. South Carolina Dept. of Probation, Parole & Pardon Services*, 576 S.E.2d 146, 149 (2002).

Probation, parole, and conditional pardon are privileges granted subject to specified conditions. Accordingly, when a supervised individual fails to comply with those conditions, revocation does not imply an inherent right to continued release but instead reflects the withdrawal of a conditional liberty interest and returns the individual to the status held prior to the grant of release. *E.g., Woodward v. Murdock*, 24 N.E. 1047 (Ind. 1890); C*ommonwealth ex rel. Meredith v. Hall*, 126 S.W.2d 1056 (Ky. 1939); *Guy v. Utecht*, 12 N.W.2d 753 (Minn. 1943); *Johnson v. United States*, 529 U.S. 694 (2000). Some courts have ruled that probation, parole, or conditional pardon functions like a contract between the supervised individual and the state. The individual can choose to accept these conditions or reject them and serve the full sentence. By choosing to accept probation, parole, or conditional pardon, the individual agrees to abide by its terms. *E.g., Gulley v. Apple*, 210 S.W.2d 514 (Ark 1948); *Ex parte Tenner*, 128 P.2d 338 (Cal. 1942); *State ex rel. Rowe v. Connor*s, 61 S.W.2d 471 (Tenn. 1933); *Ex parte Calloway*, 238 S.W.2d 765 (Tex. 1951); *Re Paquette*, 27 A.2d 129 (Vt. 1942); *Pierce v. Smith*, 195 P.2d 112 (Wash. 1948), cert denied, 335 U.S. 834 (1948). Regardless of the underlying theory – grace, contract, or both – the general argument is that probation is a privilege so that if the supervised individual refuses to comply with the conditions, a state can deny or revoke it. *E.g., People v. Eiland*, 576 N.E.2d 1185 (Ill. Ct. App. 1991). The rights of a person who is actually or constructively in the custody of state corrections officials due to the conviction of a criminal offense differs markedly from citizens in general, or for that matter, citizens under suspicion of criminal conduct.

5.2 Waiver of Formal Extradition Proceedings

Principal among the provisions of the ICAOS are the waiver of formal extradition requirements for returning supervised individuals who violate the terms and condition of their supervision. Article I of the ICAOS specifically provides that:

> The Compacting states recognize that there is no "right" of any supervised individual to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and By-laws and Rules promulgated hereunder.

Additionally, pursuant to Rule 3.109, a supervised individual is required to waive extradition as a condition of transferring supervision. That rule provides:

> (a) A supervised individual applying for interstate supervision shall execute, at the time of application for transfer, a waiver of extradition from any state to which the individual may abscond while under supervision in the receiving state; and,
> (b) States that are parties to this compact waive all legal requirements to extradition of supervised individuals who are fugitives from justice.

It is important to note that, under certain requirements, a sending state retains the authority to enter a receiving state and retake a supervised individual. See infra, at § 5.8 concerning hearing requirements. The waiver of extradition outlined in Rule 3.109 applies to any member state where the supervised individual might be located. Under Rule 3.109, authorities are not limited in their pursuit of fugitives or in returning a fugitive to the sending state. However, authorities may be required to present evidence that the fugitive is the person 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).

Although Article I of the ICAOS and Rule 3.109 have not been extensively analyzed in reported appellate decisions, courts have consistently upheld similar waiver provisions contained in prior compacts. Challenges to extradition waivers under the former Interstate Compact for Probation and Parole were unsuccessful, with courts concluding that such waivers did not violate due process. *See Gulley v. Apple*, 210 S.W.2d 514, 519 (Ark. 1948); *Woods v. State*, 87 So.2d 633 (Ala. 1956); *Ex parte Tenner,* 128 P.2d 338, 638 (Cal. 1942); *Louisiana v. Aronson*, 252 A.2d 733, 734–35 (N.J. Super. Ct. App. Div. 1969); *People ex rel. Rankin v. Ruthazer*, 107 N.E.2d 458, 461 (N.Y.1952); *Pierce v. Smith*, 195 P.2d 112, 116–17 (Wash. 1948). Even in the absence of a written waiver by the supervised individual, extradition is not available, as the ICPP operates to waive any extradition rights. *See People v. Bynul,* 524 N.Y.S.2d 321 (N.Y. Crim. Ct. 1987). Habeas corpus is generally unavailable to supervised individuals being held pending return to the sending state under an interstate Compact. *See Stone v. Robinson*, 69 So. 2d 206 (Miss. 1954) (prisoner not in Mississippi as a matter of right but as a matter of grace under the clemency extended by the Louisiana parole board; prisoner subject to being retaken on further action by the parole board); *State ex rel. Niederer v. Cady*, 240 N.W.2d 626 (Wis. 1974) (constitutional rights of a supervised individual with supervision transferred under the Compact are not violated by the denial of an extradition hearing, as the individual is not an absconder but is in another state by permission and therefore subject to the retaking provisions of the Compact); *Cook v. Kern*, 330 F.2d 1003 (5th Cir. 1964) (whatever benefits the supervised individual enjoys under the Texas extradition statute, he has not been deprived of a federally protected

5.2.1.1 No Statutory Right under ICAOS Itself

The federal right in question in a Section 1983 action is typically a constitutional right (for example, the right to equal protection under the law or the right to be free from an unreasonable search under the Fourth Amendment to the United States Constitution). But, under the language of Section 1983, it could also be a right created by a federal statute. The question of whether a federal statute creates an individual right enforceable through Section 1983 turns out to be a difficult one—and the subject of a fair amount of litigation. *See, e.g., Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002) (holding that the Family Educational Rights and Privacy Act of 1974 did not create an individual right enforceable under Section 1983).

Fortunately, the question has been answered by the federal courts in the context of ICAOS. In Doe v. Pennsylvania Board of Probation and Parole, the United States Court of Appeals for the Third Circuit concluded that ICAOS contains neither express "rights creating" language nor an implied intent to create a federal right or remedy. Therefore, Congress did not intend for it to give Compact supervised individuals enforceable individual rights. 513 F.3d 95 (3d Cir. 2008); accord *M.F. v. N.Y. Exec. Dep't Div. of Parole*, 640 F.3d 491 (2d Cir. 2011).

5.2.1.2 Constitutional Violations Related to ICAOS

While the Compact does not create a private right of action, this does not leave supervised individuals without recourse under Section 1983. Instead, their claims must be framed as violations of constitutionally protected rights. There are numerous reported cases that illustrate the types of constitutional violations supervised individuals may allege in connection with their supervision under the Compact.

A leading case is *Doe v. Pennsylvania Board of Probation and Parole*, 513 F.3d 95, the Third Circuit case noted in the subsection immediately above. In Doe, a sex offender who transferred his probation and parole supervision from New Jersey to Pennsylvania filed a Section 1983 lawsuit against officials in the receiving state. He claimed that his equal protection rights were violated when he was subjected to community notification requirements more stringent than those applied to non-ICAOS supervised individuals in Pennsylvania. Specifically, Pennsylvania mandated that all out-of-state sex offenders submit to community notification, while individuals convicted of similar offenses within Pennsylvania were only required to do so if they were designated as sexually violent predators following a civil hearing. The court rejected Pennsylvania's justifications for the differential treatment, noting that the state's own compact-enabling legislation explicitly mandated that ICAOS supervised individuals be supervised under "the same standards that prevail for its own probationers and parolees." Id. at 108. Even applying the most deferential level of constitutional scrutiny (rational basis review), the court found no rational relationship between Pennsylvania's legitimate interest in public safety and its policy of disparate treatment for out-of-state supervised individuals. The court therefore held that Pennsylvania violated Doe's right to equal protection under the Fourteenth Amendment to the United States Constitution. Id. at 112.

In *Jones v. Chandrasuwan*, 820 F.3d 685 (4th Cir. 2016), the United States Court of Appeals for the Fourth Circuit ruled in a Section 1983 action that probation officers from the sending state (North Carolina) violated an ICAOS probationer's Fourth Amendment rights by seeking his arrest without a reasonable suspicion of a violation. The alleged violations (a failure to pay fines and costs, absconding) were not properly coordinated through the receiving state's (Georgia) ICAOS office, which led to a misunderstanding about the probationer's address and whereabouts. He was arrested and improperly detained for seven days. Notwithstanding the finding that the probation officers had violated the defendant's constitutional rights, the court ultimately determined that the officers were entitled to qualified immunity, as discussed below in section 5.3.6.

Of course, not every alleged violation will be an actual constitutional violation. For example, in *Brock v. Washington State Department of Corrections*, No. C08-5167RBL, 2009 WL 3429096, at *1 (W.D. Wash. Oct. 20, 2009), a parolee transferred supervision from Montana to Washington through the Compact. The supervised individual alleged, among other things, that Washington parole officials violated his federal constitutional rights (1) under the Due Process Clause by failing to hold a probable cause hearing on the alleged violation and (2) under the Confrontation Clause by offering hearsay testimony at his violation hearing. The court concluded that the failure to hold a preliminary hearing—even if required by statute—did not give rise to a constitutional violation when the final violation hearing was held three days after the violation report was filed. And as for the alleged Confrontation Clause violation, the court found that Sixth Amendment confrontation rights apply in a criminal trial, not at a parole violation. Id. at *8. With no constitutional violation alleged, the court dismissed the suit without any need to consider whether the defendant-officials were protected by immunity or another defense.

A common situation that has generally not been considered a constitutional violation is when a receiving state fails to promptly

5.2.1.3 No Supervisor Liability under Section 1983

In general, Section 1983 liability will not be predicated solely on a theory of respondeat superior. For example, a chief probation officer or other supervisor or manager will not automatically be deemed vicariously liable simply because he or she sits higher on the chain of command than an officer who violated a supervised individual's constitutional rights. A supervisory official will be liable only when he or she plays an affirmative part in the complaint of misconduct. In Warner v. McVey, for example, the court dismissed a supervised individual's suit against the chair of the state parole board who had never met or communicated with the individual, rejecting their claim that the chair was "totally responsible for all of the subordinates that she oversees." No. 08-55 Erie, 2010 WL 3239385, at *1, *11 (W.D. Pa. July 9, 2010).

5.2.1.4 No Substitute for Appeal or Habeas Corpus

In *Heck v. Humphrey*, 512 U.S. 477 (1994), the Supreme Court clarified that a Section 1983 action should not be used to challenge the validity of a criminal judgment. If the alleged civil rights violation would be one that would render a conviction, sentence, or—in the case of a Compact supervised individual—a probation or parole revocation invalid, then it should be raised either as part of the criminal case or appeal or through habeas corpus. The distinction can be a fine one, though. For example, a Section 1983 action can be raised to challenge the use of improper revocation procedures in connection with the Compact. Compare *French v. Adams Cty. Det. Ctr.*, 379 F.3d 1158 (10th Cir. 2004) (Heck did not bar a Compact parolee's suit alleging that he was held for 73 days without a hearing or counsel, when the claim was being used to seek damages for using the wrong procedure, not for reaching the wrong result, and when success on the claim would not invalidate the underlying conviction), with *Drollinger v. Milligan*, 552 F.2d 1220 (7th Cir. 1977) (holding that challenges to specific conditions of probation in an ongoing case should be raised through a petition for habeas corpus, not by a Section 1983 action).

5.2.1.5 Official Capacity versus Individual Capacity

Plaintiffs can bring Section 1983 actions against defendants in their official capacity or in their individual capacity. Defendants sued in their official capacity will generally be immune from suits for monetary damages under the Eleventh Amendment to the United States Constitution, but that immunity will not necessarily bar a suit seeking injunctive or declaratory relief. The Eleventh Amendment will not bar a Section 1983 suit for monetary damages against an official acting in his or her individual capacity, but officials may be able to raise qualified immunity defenses in those cases. Qualified immunity bars recovery from officials to the extent that their conduct did not violate clearly established rights of which a reasonable person would have been aware. Immunity issues are discussed in detail in section 5.3.

5.2.1.6 Persons Acting under Color of Law

There is rarely any doubt in the case law that probation and parole officials are “persons” and that, in performing their duties, they are acting under “color of law” within the meaning of Section 1983. The law also allows suits against municipalities and other local governments, but not merely because such an entity employs an officer who violates someone’s civil rights. Instead, a local government unit will be liable under Section 1983 only when the alleged violation was the product of an official policy or custom. The test for determining whether a local government can be deemed liable was spelled out by the Supreme Court in *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978).

Occasionally a plaintiff will sue a probation or parole official under Section 1983, claiming that an injury or death caused by a supervised individual amounts to a violation of the constitutional rights of the victim or the victim’s family. In *Martinez v. California*, the Supreme Court held that California parole authorities could not be held responsible under Section 1983 for a murder committed by a parolee five months after his release. 444 U.S. 277 (1980). The supervised individual was in no sense an agent of the parole board, and the decedent’s death was “too remote a consequence of the parole officers’ action to hold them responsible under the federal civil rights law.” Id. at 285.

5.3 Uniform Extradition Act Considerations

A supervised individual who absconds from a receiving state is a fugitive from justice. The procedures for returning a fugitive to a demanding state can be affected by the Uniform Extradition and Rendition Act (UERA). Under that act, a fugitive may waive all procedural rights incidental to the extradition, for example the issuance of a Governor's warrant, and consent to return to the state demanding the fugitive. To be valid, the waiver must be in writing, in the presence of a judge, and after the judge has informed the fugitive of his rights under the statute. Nothing in the UERA prevents a person from voluntarily returning to a state. Several courts recognized that ICPP provided an alternative procedure by which a person can be returned to the demanding state without complying with the formalities of the UERA. *See In 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 So.2d 584 (Fla. App. 1982). ("[W]hen a person is paroled to another state pursuant to an interstate compact, all requirements to obtain extradition are waived.") Courts have recognized that compact return provisions operate independently of, and may supersede, formal extradition procedures under the Uniform Extradition Act. Courts interpreting the former Interstate Compact for Probation and Parole similarly held that compact waiver provisions displaced the formal requirements of the Uniform Extradition Act for supervised individuals subject to return. *See, e.g., Ex parte Tenner*, 128 P.2d 338 (Cal. 1942). Additionally, the supervised individual's agreement to waive extradition as a condition of relocation eliminates the requirement for formal extradition proceedings upon the sending state's request for their return.

PRACTICE NOTE

The ICAOS benefits supervised individuals by allowing them to live and receive supervision in a state where they have family and community ties. In exchange for this privilege, the terms of the ICAOS, including Rule 3.109 regarding the waiver of extradition, bind the supervised individual. Consequently, an individual under the ICAOS is subject to the "alternative procedures" outlined in the Compact and its rules, rather than the provisions of the UERA.

5.4 Retaking

As established in Article I of the ICAOS, officers from a sending state are authorized to enter a receiving state, or any other state to which a supervised individual has absconded, for the purpose of retaking. Rule 5.101(a) states that the decision to retake rests solely within the discretion of the sending state with exceptions to this discretion required in Rules 5.101-1, 5.102, 5.103 and 5.103-1.

5.4.1 Exceptions to Discretionary Retaking

Certain provisions limit a sending state's discretion and require retaking when specific criteria are met. In these circumstances, the receiving state may invoke the applicable rule, and the sending state must retake the supervised individual. Whether retaking is triggered by a new felony or violent crime conviction or by behavior requiring retaking, the underlying conduct constitutes revocable conduct under the Compact—that is, conduct that would support rescission of supervision and imposition of a custodial sentence under the receiving state's standards, as "revocation" is defined by the Compact.

Adopted in 2025 to ensure consistent application and to promote transparency during the retaking process, the compact defines *revocation* as '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 in the community.' member states may interpret and apply revocation procedures inconsistently, leading to disparities in how compact individuals are supervised and returned to sending states. This definition ensures uniform standards across member states, reducing inconsistent application, promoting fairness, and protecting the due process rights of supervised individuals during retaking.

5.4.1.1 Rule 5.102 - Retaking Following a Felony or Violent Crime Conviction

Rule 5.102 governs when a sending state must retake a supervised individual following the conviction for a new felony offense or a violent crime, as defined by the compact. Retaking under this rule is not automatic: It is triggered only upon the receiving state's request. Even when a request is made, the timing of retaking is controlled by Rule 5.102. Under Rule 5.102, the sending state may not execute retaking until the receiving state has disposed of the new criminal charges, the sentence has been satisfied, or the individual has been released to supervision for the subsequent offense, unless both states mutually agree to an earlier retaking. *See, e.g., Ayyad v. State*, No. 2025 Nev. App. Unpub. LEXIS 597, at *3 (Oct. 28, 2025) (sending state not required to retake while supervised individual still serving sentence for new felonies in receiving state).

PRACTICE NOTE

Decisions to require retaking under Rule 5.102 should be individualized and outcome focused. Courts and supervising agencies in the receiving state should consider whether retaking will improve public safety or supervision outcomes, rather than relying solely on the existence of a new conviction. The receiving state plays a key role in this determination, particularly when a new conviction results in in an additional term of supervision in that state. Requiring retaking in cases where the individual lacks stable housing or support in the sending state, may be destabilizing and undermine successful supervision.

5.4.1.2 Rule 5.103 - Retaking Based on Behavior Requiring Retaking

Rule 5.103 requires a sending state to retake a supervised individual upon the receiving state's request when the individual has engaged in behavior requiring retaking while under supervision in the receiving state. Only the receiving state may invoke Rule 5.103.

Rule 1.101 defines "behavior requiring retaking" as an act or pattern of noncompliance with supervision conditions that (1) has not been successfully addressed through documented corrective actions and (2) would result in revocation of supervision under the receiving state's standards. The receiving state must document that the conduct meets this threshold.

Because the Compact applies the receiving state's supervision standards to transferred individuals, a sending state may be required to retake an individual even if the same conduct would not warrant revocation under the sending state's laws or practices. Once the receiving state properly determines and documents that the conduct constitutes behavior requiring retaking, the sending state must proceed with retaking.

5.4.1.3 Reporting Obligation - 30-day Requirement

The receiving state must notify the sending state within 30 calendar days after determining that a supervised individual has engaged in behavior requiring retaking. The 30-day period begins when the receiving state determines and documents that the conduct meets the definition of behavior requiring retaking—not on the date the underlying conduct occurred. The reporting obligation is triggered by the receiving state's completed assessment of the conduct under Rule 1.101, following appropriate investigation and review.

5.4.2 Procedural Authority and Due Process in Retaking

Under Article I of the ICAOS, states recognize that officers from a sending state may enter a receiving state to apprehend and retake a supervised individual. Rule 5.106(a) repeats this authority, specifies that apprehending and retaking is subject to the commission's rules and due process requirements, and states that officers are required only to confirm their authority and the identity of the supervised individual. This bare minimum requirement is permissible because, pursuant to Rule 3.109(a), the supervised individual waived extradition when they applied for the transfer to the receiving state. Additionally, Rule 3.109(b) provides that all compacting states waive legal requirements to extradition of supervised individuals who are fugitives from justice.

As discussed in section 5.8, due-process requirements apply when violations form the basis for potential revocation proceedings in the sending state. Once the sending state has met its due-process obligations and established proper authority, officials in the receiving state may not prevent, delay, or otherwise interfere with the return of the supervised individual. Any such interference by judicial or local officials constitutes a violation of the ICAOS and its rules. *See* Rule 5.106.

PRACTICE NOTE

The gravity of a violating act or pattern of non-compliance is measured according to the standards of the receiving state. Consequently, a sending state may be required to retake a supervised individual even when similar conduct would not have warranted revocation in the sending state.

5.5 Arrest and Detention of Supervised Individuals in the Receiving State

Under the Compact, the receiving state supervises a transferred individual as an agent of the sending state. Although the receiving state assumes responsibility for day-to-day supervision, the sending state retains ultimate jurisdiction over the supervised individual. Courts have recognized this agency framework when interpreting interstate supervision arrangements. *See*, e.g., *State v. Hill*, 334 N.W.2d 746 (Iowa 1983); *State ex rel. Ohio Adult Parole Auth. v. Coniglio*, 610 N.E.2d 1196 (Ohio Ct. App. 1993).

This structure informs arrest and detention authority under ICAOS. The receiving state may arrest and detain a supervised individual for violations occurring within its jurisdiction, but any retaking decision remains with the sending state except where the retaking is mandated. The sending state retains authority to issue warrants and direct return pursuant to compact rules

(custodial sanction of short duration in receiving state

5.5.1 Circumstances Authorizing Arrest and Detention

The arrest and detention of an out-of-state supervised individual generally fall into three categories.

1. New criminal offense in the receiving state

A supervised individual who commits a new criminal offense in the receiving state is subject to arrest and detention under that state's criminal laws. The receiving state retains primary jurisdiction over the new offense and may prosecute and incarcerate the individual accordingly. See Rules 5.101, 5.101-1, and 5.102.

Retaking under the Compact does not occur while the individual is serving a sentence for the new offense. Pursuant to Rule 5.101-1, the sending state may not execute retaking until the criminal charges are resolved, the 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 an earlier retaking.

2. Arrest and detention pending retaking by the sending state

A receiving state may arrest and detain a supervised individual when the sending state issues a warrant and seeks retaking, whether in response to a request from the receiving state or for purposes of revocation. The sending state must issue a warrant for retaking, and if the individual is already in custody, the warrant may be lodged as a detainer.

Courts have upheld the authority of receiving states to arrest and hold supervised individuals pending retaking pursuant to compact authority. Because the individual has previously executed a waiver of extradition under Rule 3.109, formal extradition proceedings are not required. In this context, detention pending retaking has been sustained without application of traditional bail procedures applicable to new criminal charges. *See State ex rel. Ohio Adult Parole Auth. v. Coniglio*, 610 N.E.2d 1196, (Ohio Ct. App. 1993); *Crady v. Cranfill*, 371 S.W.2d 640 (Ky. Ct. App. 1963).

PRACTICE NOTE

Due process protections apply when violations occurring in the receiving state may be used by the sending state as a basis for revocation. Both U.S. Supreme Court precedent and ICAOS rules require adherence to applicable hearing requirements.

3. Arrest and detention for violations occurring in the receiving state (including for sanctioning)

A supervised individual may also be arrested and detained for violations of supervision occurring in the receiving state, even where no new criminal charges are filed and retaking has not yet been initiated. Courts have recognized that transferred individuals remain subject to enforcement of supervision conditions in the receiving state. *See Kaczmarek v. Longsworth*, 1997 WL 76190 (6th Cir.); *Perry v. Pennsylvania*, No. 05-1757, 2008 WL 2543119, at *7 (W.D. Pa. 2008).

Detention in this context is not limited to facilitating retaking. Consistent with the compact and its supervision authority, the receiving state may employ arrest and detention as part of its response to violations, including the use of authorized sanctions, provided such actions are consistent with its supervision practices for similarly situated in-state individuals and with applicable Compact rules.

5.5.2 Authority to Arrest and Detain Under ICAOS Rules

Rule 4.101-1 provides clear and independent authority for the receiving state to take a supervised individual into custody for violating their conditions of supervision. The rule codifies the commission's longstanding interpretation that "supervision" includes the authority to arrest and detain. *See Perry v. Pennsylvania*, No. 05-1757, 2008 WL 2543119, at *7 (W.D. Pa. 2008) (holding that "supervision," as defined by ICAOS, encompasses the authority to arrest and detain).

Custody under Rule 4.101-1 may be used to stabilize non-compliant behavior, enforce supervision conditions, or implement corrective actions. Detention in this context does not, by itself, require that the sending state initiate revocation or retaking proceedings.

This authority is consistent with the Compact's stated purposes, including enhancing public safety and protecting victims of crime. *See* ICAOS Article I. Article IX further requires member states to take necessary actions to effectuate the compact's purposes. Arrest and detention authority, when exercised in accordance with ICAOS rules and constitutional protections, supports those objectives.

PRACTICE NOTE

Although Rule 4.101-1 authorizes custody, the manner of arrest must comply with the receiving state's constitutional and statutory requirements. The rule permits arrest authority consistent with receiving state law but does not override procedural safeguards, including warrant requirements where applicable.

5.6 Disposition of New Crime Convictions or Violations Occurring Outside the Sending State

Under Rule 5.102, a sending state may not execute retaking while a supervised individual is serving a sentence for a new offense in the receiving state. Retaking may occur only after the criminal charges have been dismissed, the new sentence has been satisfied, or the individual has been released to supervision for the subsequent offense, unless both states mutually agree to an earlier retaking.

These timing requirements may create delays between the commission of a new offense and the sending state's ability to address violation behavior. Similar delays may arise when the supervised individual is subject to supervision in the receiving state for a separate offense and both matters must be resolved before retaking may occur.

Rule 5.101-2 provides a discretionary mechanism that permits the sending state to address certain out-of-state convictions or violations more promptly. With approval from the appropriate sentencing or releasing authority and the supervised individual's consent, the sending state may conduct an electronic or in-person proceeding to resolve the violation or conviction occurring outside its jurisdiction. The sending state must notify the receiving state of the proceeding and provide the results within ten (10) business days.

If the disposition in the receiving state fully satisfies the sending state's sentence, or results only in continued supervision, Rule 5.101-2(b) specifies that retaking may not be necessary. However, if the new disposition includes incarceration that does not fully satisfy the sending state's sentence, retaking may be required under the applicable provisions of Rules 5.102 or 5.103.

Accordingly, Rule 5.101-2 facilitates timely resolution of out-of-state convictions or violations while maintaining compliance with the compact's mandatory retaking provisions. One case emphasizing the discretionary nature of Rule 5.101-2 is *McKenzie v. Commonwealth,* No. 2023-CA-0073-MR, 2024 WL 4244464, *2 (Ky. Ct. App. Sept. 20, 2024). In another case, *State v. Sanborn*, No. CR-07-2091, 2019 Me. Super. LEXIS 25 (Cumberland Cty. Me. Super. Ct. Jan. 28, 2019), the sending state did not comply with the ICAOS rules for retaking; however, because the compact is not a source of rights for supervised individuals, the court concluded that the violation did not relieve the supervised individual of his probation in this case. The 2025 clarifications to Rule 5.101-2 clarify retaking procedures to minimize future violations.

PRACTICE NOTE

Rule 5.101-2 is a discretionary tool that promotes efficiency but does not replace or alter the mandatory retaking requirements under Rules 5.102, 5.103, or 5.103-1. When exercising this discretion, sending states should ensure that any violation proceeding or sentence disposition complies with the Compact's due process requirements and that documentation clearly establishes whether retaking is required or has been satisfied under the applicable rules.

5.6.1 Remote Hearings Under the Compact

The ICAOS rules permit the use of remote proceedings in appropriate circumstances, provided that the requirements of the compact are satisfied and no mandatory retaking provision is implicated.

When a supervised individual is physically present in the receiving state at the time of sentencing or prior to formal transfer approval, the use of remote sentencing or deferred proceedings is not inconsistent with the compact. Compact eligibility and supervision obligations are determined by the Rules, not by the physical format of the proceeding. Judges may conduct remote sentencing or deferred proceedings when the individual already resides in the receiving state, provided that all compact transfer requirements are met and supervisory authority is clearly coordinated between the sending and receiving states.

A sending state may conduct violation or revocation proceedings remotely without first retaking the supervised individual. Rule 5.101-2 authorizes proceedings to be conducted electronically or in person and clarifies that retaking is required only when the outcome necessitates incarceration or return to the sending state. However, when the rules mandate retaking, the obligation to physically retake is not affected by the use of remote proceedings. In these circumstances, a sending state must retake the supervised individual regardless of whether the violation hearing was conducted remotely.

The use of remote proceedings does not alter a supervised individual’s constitutional due process rights. Courts must ensure that notice, representation, and an opportunity to be heard are preserved in accordance with applicable law. A receiving state that facilitates communication or provides administrative assistance in connection with a remote proceeding does not assume responsibility for the sending state’s legal determinations. The sending state remains responsible for ensuring that its proceedings comply with constitutional and statutory requirements.

5.7 Arrest of Absconders

Rule 1.101 defines “abscond” as occurring when:

(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.

Rule 4.109-2 governs the receiving state’s responsibilities when it believes a supervised individual has absconded. The receiving state must make reasonable efforts to locate the individual and document those efforts. Such documentation is critical to support the issuance of a warrant. If the individual is not located within 30 calendar days, the receiving state must submit a violation report pursuant to Rule 4.109. In defined extenuating circumstances, the receiving state may bypass the 30-day investigative period and immediately submit a violation report.

Upon receipt of the violation report, the sending state must issue a warrant within 15 calendar days. Under Rule 1.101, a warrant issued under the Compact must have nationwide effect. If the supervised individual is apprehended in the receiving state, the sending state must lodge a detainer with the holding facility.

Rule 5.103-1 governs retaking following issuance of the warrant. If the individual is apprehended within 30 calendar days after the warrant is issued, the sending and receiving states may mutually agree that retaking is not required. If no agreement is reached, or if apprehension occurs more than 30 calendar days after issuance of the warrant, the receiving state must conduct a probable cause hearing in accordance with Rule 5.108. Upon a finding of probable cause, the sending state is required to retake the supervised individual. The sending state must maintain the warrant and detainer until retaking occurs or supervision is formally resumed.

5.7.1 Arrest of a Supervised Person Who Fails to Return to the Sending State as Ordered

ICAOS Rules 4.111(e) and 5.103(c) require the sending state to issue a warrant when a supervised individual fails to return to the sending state as ordered. The warrant must be issued within fifteen (15) business days after the individual's failure to appear. Although the rules do not expressly define such an individual as an "absconder," the failure to return as directed is treated procedurally in a manner similar to absconding for purposes of warrant issuance and retaking.

It should also be noted that the compact does not create a federal due process right requiring the sending state to immediately execute a warrant or conduct revocation proceedings upon issuance. Consistent with longstanding Supreme Court precedent, a supervised individual is not entitled to compel the timing of revocation proceedings until taken into custody under the warrant. *See Moody v. Daggett*, 429 U.S. 78 (1976).

PRACTICE NOTE

Prohibition of bail ensures that absconders cannot avoid returning to the sending state through local release decisions. Because ICAOS warrants are nationally executable, permitting bail or release would undermine the compact's authority and uniform enforcement. The only exception arises under Rule 5.101-1 when new criminal charges are pending in the receiving state, in which case retaking must be deferred until those proceedings are completed or both states consent to the retaking.

5.8 Requirements for a Probable Cause Hearing

When a receiving state determines that a supervised individual has absconded and the individual is subsequently apprehended, probable cause must be established pursuant to Rule 5.108 before the sending state may retake the individual from the receiving state. This requirement applies to absconders and ensures that retaking occurs only after appropriate procedural safeguards have been satisfied. It does not automatically apply to all violations unless revocation of supervision is being pursued or may be pursued by the sending state. The probable cause hearing serves two purposes: (1) to determine whether sufficient evidence supports the alleged violations, and (2) to create a record for use in the sending state's revocation proceedings.

Although transfer of supervision is a privilege and not a right, once conditional liberty has been granted, it may not be revoked arbitrarily. The Due Process Clause requires minimum procedural safeguards before revocation of conditional release. See *Morrissey v. Brewer,* 408 U.S. 471 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). Thus, while a supervised individual has no inherent right to relocate between states, once relocation has been authorized under the compact, its withdrawal must comply with due process.

5.8.1 When a Probable Cause Hearing is Not Required

A probable cause hearing under Rule 5.108 is not required in two common circumstances. First, when retaking is based on a new criminal conviction in the receiving state, no additional probable cause hearing is necessary. The conviction itself conclusively establishes the violation, and the underlying criminal proceedings satisfy due process requirements. *E.g., D'Amato v. U.S. Parole Comm'n*, 837 F.2d 72, 79 (2d Cir. 1988).

Second, a probable cause hearing is not required when retaking will result only in the supervised individual's return to the sending state for continued supervision and the sending state does not intend to use the receiving-state violations as a basis for revocation. In such cases, retaking reflects a supervisory decision rather than a revocation proceeding.

However, if there is any uncertainty about whether the sending state might revoke the supervised individual's conditional release based on violations in the receiving state, the individual should be granted a probable cause hearing as outlined in Rule 5.108. Failing to provide this hearing could prevent the violations from being considered in future revocation proceedings in the sending state.

It is important to distinguish between a probable cause hearing and a retaking hearing. As discussed above, the compact permits a sending state to enter any other member state and retake a supervised individual. Rule 5.108 applies only when violations in the receiving may serve as the basis for revocation of conditional release. Neither Rule 5.108 nor the *Gagnon* and *Morrissey* decisions require a probable cause type hearing in all circumstances of retaking. *See Johnson v. State*, 957 N.E.2d 660 (Ind. App. 2011).

5.8.2 Probable Cause Hearing Waiver

Rule 5.108(c) permits a supervised individual to waive a probable cause hearing. A valid waiver requires that the individual admit to one or more violations of supervision. *See* Rule 5.108(c); *see also, e.g., Sanders v. Pa. Bd. of Prob. & Parole*, 958 A.2d 582 (Pa. Commw. Ct. 2008). A waiver has significant procedural consequences. By waiving the hearing, the supervised individual relinquishes the right to require the receiving state to present evidence supporting the alleged violations. The written admission may thereafter be relied upon by the sending state in determining whether to revoke conditional release.

For a waiver to be valid, the record should reflect that:

- The supervised individual was advised of the right to a probable cause hearing under Rule 5.108;
- The supervised individual was informed of the alleged violations and supporting facts;
- The supervised individual was advised that waiving the hearing forfeits the right to contest the alleged violations at that stage;
- The supervised individual admitted in writing to one or more violations; and
- The supervised individual was informed in writing that the admission may be used by the sending state in revocation proceedings.

5.8.3 Due Process Rights in a Probable Cause Hearing

The U.S. Supreme Court has recognized that supervised individuals subject to probation or parole have some liberty interests, but that they need not be afforded the "full panoply of rights" enjoyed by defendants in a pretrial status, because the presumption of innocence has evaporated. *Morrissey v. Brewer*, 408 U.S. 471 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). *Carchman v. Nash*, 473 U.S. 716 (1985). Due process requirements apply equally to parole and probation revocation. *Morrissey* involved a parolee and *Gagnon* involved a probationer.

In *Morrissey*, the Supreme Court concluded that due process requires a prompt probable cause hearing at or reasonably near the place of the alleged violation. *Morrissey,* 408 U.S. at 485. In addition, the hearing procedure requires "(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a "neutral and detached" hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole." *Id*. at 489.

In *Gagnon*, 411 U.S. at 790–91, the Supreme Court concluded that a supervised individual may be entitled to counsel in some circumstances. The Supreme Court further noted, "Presumptively, it may be said that counsel should be provided in cases where, after being informed of his right to request counsel, the probationer or parolee makes such a request, based on a timely and colorable claim (i) that he has not committed the alleged violation of the conditions upon which he is at liberty; or (ii) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present."

5.8.4 Where the Probable Cause Hearing Must be Held

Rule 5.108(a) applies the locational requirement in *Morrissey v. Brewer*, 408 U.S. 471 (1972), by requiring that the probable cause hearing be held, "in or reasonably near the place where the alleged violation occurred." In most cases, this requires the hearing to be conducted in the receiving state. Rule 5.108(b) further assigns responsibility for conducting the hearing to the receiving state. *See McGrew v. City of Portland*, No. 3:23-cv-01082-HZ, 2024 WL 326597 (D. Or. Jan. 29, 2024) (concluding that the plaintiff had stated a claim for violation of due process when the receiving state did not conduct any due process hearing following arrest after the plaintiff failed to return to sending following a probation violation).

Under the former Interstate Compact for Probation and Parole (ICPP), which did not expressly allocate responsibility for conducting probable cause hearings, some courts held that due process could be satisfied by a hearing conducted in the sending state under limited circumstances. *See, e.g., In re Hayes*, 468 N.E.2d 1083 (Mass. App. Ct. 1984) (probable cause hearing in sending state sufficient where violation occurred there); *California v. Crump*, 433 A.2d 791 (N.J. Super. Ct. 1981) (permitting sending-state hearing where distance and circumstances justified). However, the ICAOS expressly addresses the location and responsibility for probable cause hearings.

5.8.5 Prompt Probable Cause Hearing

Rule 5.108(b) applies the prompt hearing requirement recognized in *Morrissey v. Brewer*, 408 U.S. 471 (1972), by requiring the receiving state to conduct the probable cause hearing within 30 days after a sending state requests retaking. The 30-day requirement is measured from the date that the sending state requests retaking, not the date of arrest. As a practical matter, this means the hearing will often occur in fewer than thirty days after the supervised individual is taken into custody. The thirty-day timeframe is consistent with due process principles articulated in *Morrissey*, where the Supreme Court held that a lapse of approximately two months between arrest and revocation hearing was not unreasonable under the circumstances. *See id.* at 488.

5.8.6 Supervised Individual's Basic Rights at a Probable Cause Hearing

Rule 5.108(a) applies the impartial decision maker requirement in *Morrissey* by requiring a neutral and detached hearing officer. In *Morrissey*, the Supreme Court concluded that the hearing did not need to be before a judicial officer. Rule 5.108(a) does not specify qualifications for the hearing officer, except that they must be neutral and detached.

Rule 5.108(e) applies the minimum due process requirements in *Morrissey* by largely mirroring those requirements. Rule 5.108(e) requires:

1. written notice of the alleged violations of the terms and conditions of supervision,
2. disclosure of non-privileged or non-confidential evidence regarding the alleged violation,
3. the opportunity to be heard in person and present witnesses and documentary evidence relevant to the alleged violation, and
4. the opportunity to confront and cross-examine witnesses, unless the hearing officer determines that a risk of harm to a witness exists.

Procedural requirements may vary by state. *See People ex rel Chang v. Martuscello*, 229 N.Y.S.3d 878, 882 (Bronx Cty. Sup. Ct. 2025) (the ICAOS provides a minimum threshold of due process that local procedures may supplement). Accordingly, if a hearing officer has questions regarding the application of due process in a particular retaking proceeding, consultation with local legal counsel is advisable to ensure compliance with applicable state law. Rule 5.108 does not itself confer a right to counsel; however, state law or governing procedures may provide for counsel depending on the circumstances of the case. The right to counsel is addressed in the next section, 5.8.6.1.

5.8.6.1 Supervised Individuals Right to Counsel

The ICAOS rules do not provide a supervised individual the right to counsel in a probable cause hearing. However, as noted above, the Supreme Court has concluded that a supervised individual may be entitled to counsel in some circumstances. *Gagnon*, 411 U.S. at 790–91.

Providing counsel in receiving-state proceedings may be appropriate where the sending state intends to rely on the alleged violations as a basis for revoking conditional release. In that circumstance, the probable cause hearing serves not only to evaluate the alleged violations but also to create a record that may be used in subsequent revocation proceedings in the sending state. *See* Rule 5.108(f). The requirement to provide counsel would generally not be required in the context of retaking if the sending state does not intend to revoke conditional release based on violations that occurred in the receiving state. In this latter context, no liberty interest is at stake, because the individual has no right to supervision in another state.

Relatedly, some courts have read the *Morrissey* and *Gagnon* decisions governing revocation hearings and the appointment of counsel to apply only after the incarceration of the defendant. *See State v Ellefson*, 334 N.W.2d 56 (SD 1983). However, the law in this area is not uniform.

5.8.7 Probable Cause Hearing Report

Rule 5.108(f) requires the receiving state to prepare a written report of the probable cause hearing within 10 business days and transmit it, along with any evidence or hearing record, to the sending state. The report must include:

1. the time, date, and location of the hearing;
2. the parties present;
3. a concise summary of the testimony and evidence relied upon; and
4. documentation of the alleged violations of supervision conditions and the hearing officer’s findings on each alleged violation.

5.8.8 Relationship Between a Probable Cause Hearing and Other ICAOS Rules Regarding Retaking and Conditions

It is important that Rule 5.108 be read in conjunction with other rules regarding retaking and conditions, since this may affect the outcome of the proceedings and the impact of subsequent proceedings in the sending state. At the conclusion of a hearing, the presiding official must determine whether probable cause exists, believing that the supervised individual committed the alleged violations of the conditions of their supervision. However, a determination made in a proceeding for mandatory retaking must be made in view of Rule 5.103(a). This rule provides, in part, that officials in the receiving state must show through documentation that the supervised individual has engaged in behavior requiring retaking. *See* Rule 5.103(a). To support the receiving state's request for mandatory retaking, as well as to provide a basis for subsequent proceedings in the sending state, which could result in revocation, the hearing officer in the receiving state should determine whether sufficient cause exists to conclude that the act or pattern of non-compliant behavior committed by the supervised individual is appropriately documented and deemed revocable. Behavior requiring retaking means "an act or pattern of non-compliance with conditions of supervision that could not be successfully addressed through documented corrective actions and would result in a request for revocation of supervision in the receiving state." *See* Rule 1.101.

If a probable cause hearing is conducted based on alleged violations of supervision conditions imposed by either the receiving or sending state, two determinations may be required. First, the hearing officer must determine whether the supervised individual committed the alleged violation, that is, whether the evidence establishes noncompliance with a condition of supervision. If a violation is found, a second consideration may arise when revocation is contemplated. Specifically, if the sending state notifies the receiving state that it intends to pursue revocation based on the violation and requests a hearing, or if the receiving state conducts the hearing to create a record sufficient to support possible revocation by the sending state, the proceeding must ensure that an adequate factual record is developed for use in the sending state's revocation process. Under *Gagnon* and *Morrissey*, the hearing officer must determine whether the violation is of sufficient nature that it would typically result in revocation in the receiving state. A hearing officer could conceivably find that the violation occurred, but that retaking is not warranted because it would not rise to the level of revocation in the receiving state. Two important points must be emphasized. First, the determination of the "likelihood of revocation" would not be conclusively binding on the sending state, as only the state granting conditional release has jurisdiction to make a final determination on revocation. *See Scott v. Commonwealth*, 676 S.E.2d 343, 347 (Va. App. 2009); *Bills v. Shulsen*, 700 P.2d 317 (Utah 1985); *State ex rel. Reddin v. Meekma*, 306 N.W.2d 664 (Wis. 1981). There is, nevertheless, a potential for conflicting conclusions between officials in the sending and receiving states regarding the severity of a violation and its implications.

Second, despite the fact that the determination of "likelihood of revocation" is based on the receiving state's standards, a sending state could conceivably obviate the need for a probable cause hearing by asserting that it has no intention of revoking the supervised individual's conditional release. Such an assertion by the sending state would prevent it from using the violation as a predicate for revocation, notwithstanding the jurisdiction to do so. This reading of Rule 5.108(a) is consistent with the general principles of *Gagnon* and *Morrissey*. The purpose of the probable cause hearing in the receiving state *is not* to test the sufficiency of a sending state's decision to retake, but to determine the merits of alleged violations that occurred in the receiving state and to secure a record for subsequent proceedings in the sending state. Under the due process principles

5.8.9 Post Probable Cause Hearing

If the hearing officer determines that probable cause exists and the supervised individual has committed the alleged violations, the receiving state may detain the individual in custody pending the outcome of decisions in the sending state. Within 15 business days of receipt of the probable cause hearing report, the sending state must notify the receiving state of its intent to (1) retake the supervised individual, or (2) take other action. *See* Rule 5.108(h). The sending state must retake a supervised individual within 30 calendar days of the decision to retake. Therefore, it is conceivable that a receiving state may have to hold a supervised individual for up to 45 days after the hearing officer issues a report. If held in custody by the receiving state, the supervised individual cannot be admitted to bail or otherwise released from custody. *See* Rule 5.105(c). *See also* discussion at § 5.9. The cost of incarceration is the responsibility of the receiving state. *See* Rule 5.105(d).

Rule 5.108 also establishes mandatory deadlines for the sending state following the issuance of the hearing officer's report. Failure to comply with these requirements may give rise to challenges regarding the lawfulness of incarceration in either the sending or receiving state. *See, Braden v. 30th Judicial Cir. Ct*, 410 U.S. 484 (1973) (holding that a habeas corpus petition is not limited to the territorial limits of the district where a petitioner is physically present).

PRACTICE NOTE

A sending state's failure to comply with post-hearing report timeframes could give rise to habeas corpus relief in either the sending or receiving states.

If the hearing officer does not find probable cause that the supervised individual committed the alleged violations, the receiving state must continue supervision. *See* Rule 5.108(i). The supervised individual must be released if they are in custody. *See* Rule 5.108(i) (2) & (3). Additionally, the receiving state must notify the sending state of its determination at which point the sending state must vacate any warrant it has issued. Likewise, the receiving state must vacate any warrant it has issued.

5.9 Bail Pending Return

A supervised individual subject to retaking proceedings under the ICAOS is not entitled to bail. Rule 5.105(c) provides that no court or paroling authority in any member state may admit a supervised individual to bail pending completion of the retaking process, notwithstanding contrary provisions of state law. Articles V and XIV of the Compact establish that duly promulgated Commission rules have the force and effect of statutory law in each member state. Accordingly, the "no bail" provision in Rule 5.105(c) is binding on member states and their courts.

Courts interpreting the former Interstate Compact for Probation and Parole similarly recognized that receiving states were bound by compact return provisions and could not release supervised individuals on bail pending retaking. *See, e.g., State ex rel. Ohio Adult Parole Auth. v. Coniglio*, 610 N.E.2d 1196 (Ohio Ct. App. 1993); *State v. Hill*, 334 N.W.2d 746 (Iowa 1983); *Ex parte Womack*, 455 S.W.2d 288 (Tex. Crim. App. 1970).

Although bail is not authorized pending retaking, detention may not be indefinite. Courts have held that unreasonable delay in executing retaking authority may warrant relief. *See Windsor v. Turner,* 428 P.2d 740 (Okla. Crim. App. 1967).

5.10 Revocation or Punitive Action by the Sending State - Conditions

For purposes of revocation or other punitive action, the sending state must give the same force and effect to a violation of a condition imposed by the receiving state as if the condition had been imposed by the sending state. A violation of a properly imposed receiving-state condition may therefore serve as a basis for revocation or other sanctions, even if that condition was not included in the original supervision plan established by the sending state. *See* Rules 4.103 and 4.103-1

The receiving state may impose conditions at the time of acceptance or during the term of supervision, provided those conditions are consistent with Compact requirements. If a supervised individual violates such a condition, the sending state must recognize and act upon that violation in accordance with its own revocation procedures.

PRACTICE NOTE

Courts in the sending state should treat violations of lawfully imposed receiving-state conditions as equivalent to violations of locally imposed conditions when determining whether revocation or other sanctions are warranted.

Chapter 6 - Liability and Immunity Considerations for Judicial Officers and Employees

This chapter summarizes the legal framework governing those two forms of exposure and outlines the immunity doctrines and defenses that frequently control litigation outcomes. It is not intended as a comprehensive survey of state tort law, which varies by jurisdiction.

6.1 Overview of Legal Risk

The ICAOS operates at the intersection of public safety, interstate cooperation, and constitutional law. Legal risk arises in two principal ways:

- State accountability for compact noncompliance. Member states are legally bound to follow the compact and its rules. Material or persistent noncompliance may result in commission enforcement action and, if necessary, judicial enforcement.
- Supervised individuals (and less frequently victims or third parties) may bring claims alleging constitutional violations or state-law torts tied to compact decisions, detention, or supervision practices.

6.2 State Accountability for Noncompliance with Compact

This section explains that ICAOS functions as binding federal law, preempting conflicting state authority and requiring enforcement by all branches of government, while prohibiting unilateral state modification. It also outlines the Interstate Commission's graduated enforcement authority to address noncompliance and maintain uniform application, including the potential legal and reputational risks to states arising from agency or court violations.

6.2.1 ICAOS as Binding Federal Law

ICAOS is a congressionally sanctioned interstate compact enacted by all member jurisdictions. Upon congressional consent, interstate compacts and their duly promulgated rules supersede conflicting state statutes, policies, and practices.

All branches of state government, executive, legislative, and judicial, are bound to enforce and apply the compact. States may not unilaterally modify, reinterpret, or suspend compact obligations through local law, court order, or administrative practice.

6.2.2 Commission Enforcement Authority

The Compact provides the Interstate Commission with express authority to ensure compliance.

- Article XI authorizes rulemaking and enforcement authority.
- Rule 6.102 permits corrective action when a state fails to comply with the Compact, rules, or bylaws.
- Article XII authorizes judicial enforcement, including injunctive relief and recovery of litigation costs and attorney's fees.

Enforcement measures are graduated. The commission may require remedial training and corrective action plans before imposing sanctions such as fines, suspension, or termination of membership. The purpose of enforcement is to preserve uniform application of the Compact and protect public safety, not to punish states.

6.2.3 Conduct That May Trigger Enforcement

Substantial or persistent noncompliance may result in enforcement action. Examples include:

- Repeated denial of mandatory transfer requests;
- Failure to comply with required timeframes;
- Judicial practices that allow supervised individuals to remain out of state beyond Compact limits without proper processing;
- Improper warrant or retaking practices inconsistent with Compact rules;
- Administrative failures such as nonpayment of dues, failure to appoint a Commissioner or maintain a State Council, or failure to comply with corrective action plans.

Noncompliance that results in a supervised individual being improperly relocated, improperly detained, or left unsupervised increases legal and reputational risk to the state.

6.2.4 Role of Courts and Executive Agencies

Article I of the Compact directs member states to “enforce this compact and take all actions necessary and appropriate to effectuate the compact’s purposes and intent.” Judicial orders inconsistent with ICAOS do not alter compact obligations. While judges enjoy personal immunity for judicial acts, court practices that conflict with ICAOS may nevertheless create state-level noncompliance subject to commission review and enforcement.

6.3 Private Litigation Arising from Compact Supervision

This section discusses how private litigation arising from compact supervision can expose states and supervising agencies to legal liability, helping officials understand potential risks, judicial implications, and the importance of consistent supervision while protecting the rights of supervised individuals.

6.3.1 No Private Right of Action Under ICAOS

Courts have consistently held that ICAOS does not create an express or implied private right of action for supervised individuals. The compact is an agreement among states for the regulation and supervision of individuals subject to the Compact. Claims framed solely as “violations of ICAOS” are therefore generally dismissed unless independently grounded in constitutional or statutory rights.

6.3.2 Constitutional Claims (42 U.S.C. § 1983)

Most litigation arising from Compact supervision proceeds under 42 U.S.C. § 1983 (Section 1983), which provides a cause of action for violations of federal constitutional rights by persons acting under color of state law. The statute gives a right to sue for “deprivations of any rights, privileges, or immunities secured by the Constitution and laws” caused by persons acting under color of law. To succeed on a Section 1983 claim, a plaintiff must show (1) a deprivation of a federal right and (2) that the person who caused the deprivation acted under color of state law. *Gomez v. Toledo*, 446 U.S. 635 (1980). ICAOS itself does not supply the “federal right” for § 1983 purposes. Instead, the claim must be anchored in the Constitution (e.g., due process, equal protection, Fourth Amendment). Courts analyze these claims under general constitutional principles.

6.3.3 State Tort Claims

Supervised individuals (and occasionally third parties) may assert state-law tort claims related to conduct arising under the Compact. These claims are governed by the tort law of the relevant jurisdiction and are frequently limited by sovereign immunity doctrines or state tort claims statutes. In many jurisdictions, liability turns on whether the challenged conduct is characterized as discretionary (often immune) or ministerial/operational (potentially actionable). Nevertheless, some of the cases in which tort claims have been raised are illustrative, highlighting the types of claims likely to arise in the context of the Compact.

6.3.4 No Statutory Right Under ICAOS Itself

The federal right in question in a Section 1983 action is typically a constitutional right (for example, the right to equal protection under the law or the right to be free from an unreasonable search under the Fourth Amendment to the United States Constitution). But, under the language of Section 1983, it could also be a right created by a federal statute. The question of whether a federal statute creates an individual right enforceable through Section 1983 turns out to be a difficult one—and the subject of a fair amount of litigation. *See, e.g., Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002) (holding that the Family Educational Rights and Privacy Act of 1974 did not create an individual right enforceable under Section 1983).

Fortunately, the question has been answered by the federal courts in the context of ICAOS. In *Doe v. Pennsylvania Board of Probation and Parole*, the United States Court of Appeals for the Third Circuit concluded that ICAOS contains neither express "rights creating" language nor an implied intent to create a federal right or remedy. Therefore, Congress did not intend for it to give Compact supervised individuals enforceable individual rights. 513 F.3d 95 (3d Cir. 2008); *accord M.F. v. N.Y. Exec. Dep't Div. of Parole*, 640 F.3d 491 (2d Cir. 2011).

6.3.4.1 Constitutional Violations Related to ICAOS

While the Compact does not create a private right of action, this does not leave supervised individuals without recourse under Section 1983. Instead, their claims must be framed as violations of constitutionally protected rights. There are numerous reported cases that illustrate the types of constitutional violations supervised individuals may allege in connection with their supervision under the Compact.

A leading case is the *Doe v. Pennsylvania Board of Probation and Parole*, 513 F.3d 95 (3d Cir. 2008), noted above, in which the court noted in the subsection immediately above. In *Doe*, a sex offender who transferred his probation and parole supervision from New Jersey to Pennsylvania filed a Section 1983 lawsuit against officials in the receiving state. He claimed that his equal protection rights were violated when he was subjected to community notification requirements more stringent than those applied to non-ICAOS supervised individuals in Pennsylvania. Specifically, Pennsylvania mandated that all out-of-state sex offenders submit to community notification, while individuals convicted of similar offenses within Pennsylvania were only required to do so if they were designated as sexually violent predators following a civil hearing. The court rejected Pennsylvania's justifications for the differential treatment, noting that the state's own compact-enabling legislation explicitly mandated that ICAOS supervised individuals be supervised under "the same standards that prevail for its own probationers and parolees." *Id*. at 108. Even applying the most deferential level of constitutional scrutiny (rational basis review), the court found no rational relationship between Pennsylvania's legitimate interest in public safety and its policy of disparate treatment for out-of-state supervised individuals. The court therefore held that Pennsylvania violated Doe's right to equal protection under the Fourteenth Amendment to the United States Constitution. *Id*. at 112.

In *Jones v. Chandrasuwan*, 820 F.3d 685 (4th Cir. 2016), the United States Court of Appeals for the Fourth Circuit ruled in a Section 1983 action that probation officers from the sending state (North Carolina) violated an ICAOS probationer's Fourth Amendment rights by seeking his arrest without a reasonable suspicion of a violation. The alleged violations (a failure to pay fines and costs, absconding) were not properly coordinated through the receiving state's (Georgia) ICAOS office, which led to a misunderstanding about the probationer's address and whereabouts. He was arrested and improperly detained for seven days. Notwithstanding the finding that the probation officers had violated the defendant's constitutional rights, the court ultimately determined that the officers were entitled to qualified immunity.

In *Johnson v. Tims*, No. 24-2805, 2025 WL 3002827 (7th Cir. Oct. 27, 2025), the court concluded that the plaintiff plausibly alleged that he was detained without due process when the sending state did not respond to a Rule 4.109 report and thus, he could not be released pursuant to a trial court order in the receiving state.

Of course, not every alleged violation will be an actual constitutional violation. For example, in *Brock v. Washington State Department of Corrections*, No. C08-5167RBL, 2009 WL 3429096, at *1 (W.D. Wash. Oct. 20, 2009), a parolee transferred supervision from Montana to Washington through the Compact. The supervised individual alleged, among other things, that Washington parole officials violated his federal constitutional rights (1) under the Due Process Clause by failing to hold a probable cause hearing on the alleged violation and (2) under the Confrontation Clause by offering hearsay testimony at his violation hearing. The court concluded that the failure to hold a preliminary hearing—even if required by statute—did not give rise to a constitutional violation when the final violation hearing was held three days after the violation report was filed. And as for the alleged Confrontation Clause violation, the court found that Sixth Amendment confrontation rights apply in a criminal

6.3.4.2 No Supervisor Liability Under Section 1983

In general, Section 1983 liability will not be predicated solely on a theory of *respondeat superior.* A supervisory official will be liable only when he or she plays an affirmative part in the complaint of misconduct. In *Warner v. McVey*, for example, the court dismissed a supervised individual's suit against the chair of the state parole board who had never met or communicated with the individual, rejecting their claim that the chair was "totally responsible for all of the subordinates that she oversees." No. 08-55 Erie, 2010 WL 3239385, at *1, *11 (W.D. Pa. July 9, 2010).

6.4 Tort Claims by Supervised Individuals

Supervised individuals will sometimes allege that officers were negligent in carrying out their duties under the Compact. For example, in *Grayson v. Kansas*, No. 06-2375-KHV, 2007 WL 1259990, at *1 (D. Kan. Apr. 30, 2007), a probationer transferred under the Compact from Missouri to Kansas alleged that Kansas officials were negligent in detaining him for more than five months after a preliminary violation hearing without notifying Missouri officials that he was incarcerated. The court concluded that, as a matter of controlling Kansas law, the Kansas officials' failure to act did not implicate a specific duty necessary to sustain a negligence claim. *Id*. at *5. The court reached a similar conclusion with respect to officials in the sending state. *Id*. at *8. None of the officials committed an affirmative act or made a specific promise to the plaintiff that would suffice to create an exception under Kansas' public duty doctrine, which states that law enforcement officers owe their duty to the public at large and not to any particular individual, absent an affirmative act causing injury or a specific promise to the individual. (The public duty doctrine is discussed in greater detail in section 6.5.)

In a later order issued in the same case, the court again noted the lack of an affirmative act sufficient to breach Kansas' public duty doctrine. *Grayson v. Kansas,* No. 06-2375-KHV, 2007 WL 2994070, at *1, *10 (D. Kan. Oct. 12, 2007). The court also noted that a special duty can arise under Kansas law for non-discretionary responsibilities that an officer is required to carry out by law. Such a duty existed in the context of ICAOS Rule 4.109(a), which uses the word "shall" and thus requires a receiving state to notify a sending state of an act or pattern of behavior requiring retaking within 30 calendar days of discovery or determination. In this case, however, there was no dispute that Kansas officials fulfilled that duty, initially sending their violation report to Missouri in a timely fashion. Because no other nondiscretionary rule applied with respect to the supervised individual's lengthy incarceration after the initial notification, there was no additional duty, and therefore no actionable negligence. Still, it is important to note the distinction between discretionary and non-discretionary acts, which can play a role in the defenses available to officers sued in tort.

Other cases have found that the language of the Compact and related state compact-enabling statutes can give rise to a duty of care supporting tort liability. In *Paull v. Park County*, 218 P.3d 1198 (Mont. 2009), a Compact probationer was injured when the contract van service hired to transport him from the receiving state (Florida) back to the sending state (Montana) for a violation hearing crashed, killing one of the drivers and injuring the probationer. The probationer sued Montana officials, alleging that the crash and his injuries were caused by the driver's negligence and that the drivers were agents of the state probation officials who had hired them to do the work. (The facts of the crash were extraordinary. The driver lost control of the van and rolled it as he was swerving, trying to spill plastic containers into which the shackled prisoners had urinated when the drivers would not allow them to make toilet stops.)

The Supreme Court of Montana held that under the language of Montana's compact-enabling statute, the state had a responsibility for its probationers and a responsibility for returning them to Montana when necessary. The court also held that the transportation of prisoners was an inherently dangerous activity and that, therefore, under Montana law, a governmental unit that contracts to transport prisoners may be held vicariously liable for injuries caused by an independent contractor carrying out the activity.

6.4.1 Tort Claims by Others

An unfortunate fact pattern that arises from time to time is when a Compact supervised individual causes the injury or death of a victim. Victims of those incidents (or their family members or estate) will sometimes raise tort claims against correctional or judicial officials related to those injuries or deaths.

In some of those case, courts will find that the officials' actions were not the proximate cause of the harm done to the victim, because the link between state action and the harm is too attenuated. *See, e.g., Goss v. State*, 714 A.2d 225 (N.H. 1998). Other courts have established a forgiving standard of care for officials, finding them liable only for the "grossly negligent or reckless release of a highly dangerous prisoner." *See Grimm v. Ariz. Bd. of Pardons & Parole*, 564 P.2d 1227 (Ariz. 1977). And finally, in many cases, resolution of the case will turn on the various immunities enjoyed by the defendant-officials, discussed in section 6.5. *See, e.g., Hodgson v. Miss. Dep't of Corr.*, 963 F. Supp. 776 (E.D. Wis. 1997) (a Compact case in which the sending state officials were deemed immune from a wrongful death suit filed by the father of a woman murdered in the receiving state).

6.4.2 Claims Under the Compact Itself

Some federal statutes have their own enforcement mechanism through an express or implied cause of action in the federal statute itself. *See Alexander v. Sandoval*, 532 U.S. 275 (2001) (applying the test through which a court determines whether a statute creates a freestanding private right of action and determining that no such right of action exists to enforce disparate-impact regulations issued under Title VI of the Civil Rights Act of 1964). Courts have concluded that nothing in the Interstate Compact agreement or the underlying federal statute reveals any intent by Congress or the compacting states to create private rights or remedies for supervised individuals. *M.F. v. N.Y. Exec. Dep't Div. of Parole*, 640 F.3d 491 (2d Cir. 2011). Along similar lines, a claim styled as one against the Compact itself will be dismissed. *Flinn v. Jones*, No. 3:17cv653-LC-CJK, 2018 WL 3372043, at *1, *2 (N.D. Fla. June 27, 2018) ("Any claim under the ICAOS, or against the 'Florida Interstate Compact,' therefore, is due to be dismissed.").

Supervised individuals occasionally argue that the Compact is a contract that creates enforceable rights for third-party beneficiaries—namely, the supervised individuals themselves. Though courts (including the Supreme Court) agree that interstate compacts are contracts, *see, e.g., Petty v. Tenn.-Mo. Bridge Comm'n*, 359 U.S. 275 (1959), they have not found any express or implied intent by Congress and the compacting states that supervised individuals are intended third-party beneficiaries under ICAOS, *see Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95, 107 (3d Cir. 2008)[4] ("The Compact speaks of cooperation between states, protection of the rights of victims, regulation and control of supervised individuals across state borders and the tracking, supervision and rehabilitation of these individuals. . . . Doe and similarly situated parolees are not beneficiaries of this Compact; they are merely the subjects of it."); *Cuciak v. Ocean Cty. Prob. Office*, No. 08-5222 (MLC), 2009 WL 1058064 (D.N.J. Apr. 20, 2009) (ICAOS creates no private right of action through which a probationer can complain about one state's failure to effectuate a prompt transfer to another state—which in any event is not ever required under the Compact rules).

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[4]This decision interpreted the former Interstate Compact for Probation and Parole (ICPP). The ICAOS replaced the ICPP in 2002, but courts continue to look to ICPP case law where its reasoning is consistent with the current Compact's structure and purpose.

6.5 Immunity Doctrines and Related Defenses

This section explains the scope of immunity doctrines and related defenses available to states, agencies, and officials in the context of compact supervision, including when such protections apply and their limitations. It helps practitioners understand how immunity affects liability exposure and reinforces the importance of adhering to ICAOS requirements to reduce legal risk.

6.5.1 Eleventh Amendment Immunity

Under the Eleventh Amendment to the United States Constitution, "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. The Eleventh Amendment thus bars most lawsuits seeking damages from states and from units of state government in federal court.

In many instances, applying this rule is straightforward. For example, when a supervised individual sues the State of Washington and the Washington Department of Corrections in federal court for damages related to an alleged civil rights violation, the court will typically dismiss the claims against those defendants without hesitation. They are immune from such suits under the Eleventh Amendment. *Brock v. Wash. Dep't of Corr.*, No. C08-5167RBL, 2009 WL 3429096, at *1 (W.D. Wash. Oct. 20, 2009); *see also Warner v. McVey*, No. 08-55 Erie, 2010 WL 3239385, at *1 (W.D. Pa. July 9, 2010) (finding the Pennsylvania Parole Board immune from suit on Eleventh Amendment grounds in a case involving an interstate transfer from Iowa to Pennsylvania).

6.5.2 State Sovereign Immunity

An application of state sovereign immunity in a case arising under the Compact can be seen in *Hodgson v. Mississippi Department of Corrections*, 963 F. Supp. 776 (E.D. Wis. 1997). As discussed in section 5.2.2.2, Hodgson involved a woman who was murdered in Wisconsin by a Mississippi parolee being supervised there under the Compact. The victim's father sued various Mississippi officials in tort for wrongful death.

As state officials acting in their official capacities, the Mississippi officials were deemed immune from suit. Under the applicable Mississippi law—as applied by the federal court in Wisconsin, where the suit was filed—state officials are immune from tort suits for their "discretionary" acts (those requiring personal deliberation, decision, and judgment) but not for their "ministerial" acts (those duties positively imposed by law and required in specified circumstances). The court concluded that the officials' acts under the Uniform Act for Out-of-State Parolee Supervision were discretionary and thus found them to be immune from suit on the plaintiff's wrongful death claim. *Id.* at 789. (The father's claim against the Mississippi Department of Corrections and its officers in their official capacities was also deemed barred in federal court under the Eleventh Amendment.)

The distinction between discretionary and ministerial (some states use different terms, such as "operational") acts is not unique to Mississippi, and it could have a bearing on the sovereign immunity analysis under many states' tort laws. In those states, an official doing work related to the Compact would be likely to have stronger immunity protection when carrying out discretionary functions under the Compact.

6.5.3 Immunity in Another State's Court

Neither the Eleventh Amendment nor other formulations of sovereign immunity bar a suit against a state in the courts of another state. *Nevada v. Hall*, 440 U.S. 410 (1979). In *Mianecki v. Second Judicial Court of Washoe County*, 658 P.2d 422 (Nev. 1983), sovereign immunity did not prevent a tort suit in Nevada against the state of Wisconsin and one of its ICAOS administrators who failed to notify a transferring probationer's new housemates of his criminal and sexual history, leading to the sexual abuse of their minor son. Under *Nevada v. Hall*, Wisconsin and its administrator were not immune from suit in Nevada's courts. The Supreme Court of Nevada also held that Nevada was not required to grant full faith and credit to the immunity the defendants would have enjoyed in Wisconsin's courts. On the contrary, Nevada law applied in this case. Under Nevada law, the failure to notify the victim's family about the nature of the supervised individual's prior offense was considered an "operational" deficiency (i.e., not discretionary), which meant that sovereign immunity would be waived. *Mianecki*, 658 P.2d at 424.

6.5.4 Judicial Immunity

Judges have absolute immunity from liability as long as they are performing a judicial act and there is not a clear absence of all jurisdiction. *Stump v. Sparkman*, 435 U.S. 349 (1978). A judge is not deprived of absolute immunity from liability for damages because an action he or she took was in error, illegal, or even done maliciously. *Mireles v. Waco*, 502 U.S. 9 (1991). Judicial immunity offers protection from suits for monetary damages, but it will not necessarily bar prospective injunctive relief. *Pulliam v. Allen*, 466 U.S. 522 (1984).

Under that framework, a federal court found that a sentencing judge was absolutely immune from a lawsuit brought by a Compact-supervised individual who claimed that the judge's sentence infringed on his rights by hindering his transfer to his home state of Alabama. *Flinn v. Jones*, No. 3:17cv653-LC-CJK, 2018 WL 3372043, at *1, *3 (N.D. Fla. June 27, 2018).

Judicial immunity is not limited to judges; it can extend to others who perform functions "intimately related to" or that are "an integral part of" the judicial process. *Ashbrook v. Hoffman*, 617 F.2d 474 (7th Cir. 1980). For example, a hearing officer holding ICAOS preliminary violation hearings was deemed to have absolute judicial immunity to the extent that she was performing a function previously assigned to judges. *Brock v. Wash. Dep't of Corr.*, No. C08-5167RBL, 2009 WL 3429096, at *1, *9 (W.D. Wash. Oct. 20, 2009).

Judicial immunity can, in certain circumstances, extend to probation and parole officers. For example, an officer might have absolute judicial immunity for activities related to the preparation of a pre-sentencing report, *Burkes v. Callion*, 433 F.2d 318 (9th Cir. 1970), or when taking actions necessary to carry out and enforce the conditions of probation imposed by the court, *see Acevedo v. Pima Cty. Adult Prob. Dep't,* 690 P.2d 38 (Ariz. 1984). More generally, it has been said that probation and parole officers are absolutely immune from suits challenging conduct intimately associated with the judicial phase of the criminal process. *Copus v. City of Edgerton,* 151 F.3d 646 (7th Cir. 1998) (probation officer).

However, not all officer duties will be accorded judicial immunity. In *Grayson v. Kansas*, No. 06-2375-KHV, 2007 WL 1259990, at *1 (D. Kan. Apr. 30, 2007), a Compact supervised individual sued probation officials in the receiving state under Section 1983 for violating his due process rights. The state's ICAOS administrator, deputy administrator, and two probation/parole officers argued that they were entitled to absolute judicial immunity from liability stemming from the performance of their duties related to the judicial process. The court disagreed, noting that the functions of a parole officer were too far removed from the judicial process to be accorded absolute immunity. *Id.* at *7 (citing *Mee v. Ortega*, 967 F.2d 423 (10th Cir. 1992)); *see also Russ v. Uppah*, 972 F.2d 300 (10th Cir. 1992).

6.5.5 Qualified Immunity

Government officials sued in their individual capacity have what is known as qualified immunity from suits for damages to the extent that their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have been aware. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). A qualified immunity analysis thus asks two questions: (1) was there a violation of a right?; and, (2) was the right at issue "clearly established," such that it would have been obvious to a reasonable officer in the situation that his or her conduct was unlawful? Qualified immunity is a high hurdle for plaintiffs to overcome; it has been said to "provide ample protection to all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335 (1986).

Courts often engage in a circumstance-specific inquiry when analyzing whether a right is clearly established for qualified immunity purposes. General awareness of the Bill of Rights will not suffice to put an officer on notice that his or her acts violated a clearly established right. Instead, the analysis typically focuses on whether case law from the Supreme Court, the controlling federal circuit, or the state high court had already decided a similar case or articulated a clearly governing rule. Few ICAOS cases have reached those courts, and even fewer have involved rules the court deemed "clearly established" in the manner necessary to overcome the defendants' qualified immunity protection.

For example, in *Jones v. Chandrasuwan*, 820 F.3d 685 (4th Cir. 2016), the United States Court of Appeals for the Fourth Circuit concluded that receiving state officers violated a supervised individual's constitutional rights by seeking his arrest without reasonable suspicion. However, because the level of suspicion necessary to arrest a probationer had not been established "beyond debate" by the Supreme Court or the Fourth Circuit, the law was not sufficiently clearly established to put a reasonable official on notice that he or she was violating the right. The officers were therefore entitled to qualified immunity. *Id*. at 696.

In order to be "clearly established" for purposes of a qualified immunity analysis, the right in question must have been clearly established at the time of the alleged violation. Resolution of the right through other case law decided after the alleged violation will not render the right clearly established. For instance, in *Warner v. McVey*, 429 Fed. App'x 176, 178 (3d Cir. 2011), the United States Court of Appeals for the Third Circuit held that a sex offender's constitutional right to due process before being classified as a sex offender was not clearly established at the time when Pennsylvania probation officials made that determination without a hearing. The appellate court case clarifying the scope of the right—*Renchenski v. Williams*, 622 F.3d 315 (3d Cir. 2010)—was not decided until after the individual was designated a sex offender, and so a reasonable official would not have been on notice of the rule.

None of this is to say that no constitutional right is clearly established in the context of the Compact. For example, in *Grayson v. Kansas*, No. 06-2375-KHV, 2007 WL 1259990, at *1 (D. Kan. Apr. 30, 2007), the court determined, based on relevant federal circuit precedent, that the continued detention of a supervised individual, which a reasonable officer would recognize as unlawful, constituted a violation of the individual's due process rights. The officers therefore were not entitled to qualified immunity—although they later succeeded in showing that they did not have any personal participation in the actual violation.

legal system is crucial to correctly applying their terms and conditions, thereby preventing legal jeopardy in fulfilling contractual

Chapter 7 General Law of Interstate Compacts

Interstate Compacts are not new legal instruments. Compacts derive from the nation's colonial past where states utilized agreements, like modern Compacts, to resolve inter-colonial disputes, particularly boundary disputes.

The colonies and crown employed a process to negotiate and submit colonial disputes to the crown through the Privy Council for final resolution. This created a long tradition of resolving state disputes through negotiation followed by submission of the proposed resolution to a central authority for its concurrence. The modern "Compact process" was formalized under the Articles of Confederation. Article VI provided: "No two or more states shall enter into any treaty, confederation or alliance whatever without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue."

Concerned with managing interstate relations and the creation of powerful political and regional allegiances, the Founders barred states from entering "any treaty, confederation or alliance whatsoever" without the approval of Congress. They also constructed an elaborate scheme for resolving interstate disputes. Under Articles of Confederation, Article IX, Congress was to "be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other causes [.]" Later, the concern over unregulated interstate cooperation continued during the drafting of the U.S. Constitution, resulting in the adoption of the "Compact Clause," Article I, sect. 10, cl. 3.

The Compact Clause provides that, "No state shall, without the consent of Congress…enter into any agreement or Compact with another state, or with a foreign power[.]" This wording is important because the Constitution does not so much authorize states to enter into Compacts as it bars states from entering into Compacts without congressional consent. Unlike the Articles of Confederation, however, in which interstate disputes concluded by appeal to Congress, the Constitution vests ultimate resolution of interstate disputes in the Supreme Court either under its original jurisdiction or through the appellate process. For a thorough discussion on the history of interstate Compacts from their origins to the present, see generally, Michael L. Buenger & Richard L. Masters, *The Interstate Compact on Adult Offender Supervision: Using Old Tools to Solve New Problems*, 9 Roger Williams U. L. Rev. 71 (2003); Felix Frankfurter & James M. Landis, *The Compact Clause of the Constitution – A Study in Interstate Adjustments*, 34 Yale L.J. 685 (1925); Buenger, et al., *supra.*

The legal framework governing Compacts encompasses a blend of Compact texts and case law from federal and state courts nationwide. Due to the limited number of court decisions that establish specific legal principles for any given Compact, courts often reference decisions from other federal and state courts when interpreting and applying Compact provisions. Additionally, courts draw on the texts and case law of other Compacts to establish generally applicable principles of Compact law. Given the intricate legal foundation and the widespread use of Compacts, judges and court personnel need to be well-versed in the law of interstate Compacts.

Interstate Compacts are not mere agreements between states open to parochial interpretations or selective application. They are statutory contracts binding member states, including their respective agencies, officials, and citizens to a set of agreed principles and understandings. These Compacts are not recommended procedures or discretionary proposals but are mandatory commitments. They differ from uniform, model, or suggested state laws and are not administrative agreements between agencies or executive officials. Understanding the unique significance of interstate Compacts within the American

7.1 Who Must Comply with an Interstate Compact?

Interstate Compacts are binding on signatory states, meaning once a state legislature adopts a Compact, it binds all agencies, state officials and citizens to the terms of that Compact. Since the very first Compact case, the U.S. Supreme Court has consistently held that a Compact is an enforceable agreement governing the subject matter of the Compact. *Green v. Biddle*, 21 U.S. (8 Wheat.) 1, 89 (1823); *see also Hinderlider v. La Plata River & Cherry Creek Ditch Co*., 304 U.S. 92, 108 (1938); West Virginia ex rel. *Dyer v. Sims*, 341 U.S. 22, 28 (1951); *Alabama v. North Carolina*, 560 U.S. 330, 334 (2010) (applying contract law principles to Compact interpretation); *New York v. New Jersey,* 598 U.S. 218, 224–25 (2023) (same).

In the case of the Interstate Commission for Adult Offender Supervision (ICAOS), member states agree to a binding Compact governing the movement of supervised individuals across state lines. The ICAOS is not discretionary; rather, it binds the member states, state officials (including judges, court personnel, and probation/parole authorities), and citizens to the Compact requirements that determine the circumstances, procedures, and supervision applicable to interstate transfers. *See, e.g., M.F. v. State Exec. Dep't*, 640 F.3d 491, 497 (2d Cir. 2011) (stating, "The Compact is an agreement among sovereign states."). *Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95, 105-106 (3d Cir. 2008) (stating, "Once New Jersey granted permission for Doe to return to Pennsylvania, Pennsylvania was required to assume supervision over Doe and to treat him as an in-state parolee. The Commonwealth has not done so and in treating Doe and other out-of-state parolees differently, it violates its own agreement failing to do precisely what it promised . . . ."). Failure to comply with the Compact can have significant consequences for a non-complying state, including enjoinder from taking actions in contravention of the Compact. *See, e.g., Interstate Comm'n for Adult Offender Supervision v. Tenn. Bd. of Prob. & Parole*, No. 04-526-KSF (E.D. Ky. June 13, 2005) (order granting permanent injunction) (stating "[T]he defendants, their respective officers, agents, representatives, employees and successors, and all other persons in active concert and participation with them, are hereby permanently restrained and enjoined from denying interstate transfers . . . ."). The ICAOS and its rules do not create a recommended process but rather a compulsory and binding process for applicable cases.

7.2 Nature of Interstate Compacts

Beginning with the Articles of Confederation, states used compacts to settle boundary disputes. In 1918, Oregon and Washington enacted the first compact solely devoted to joint supervision of an interstate resource (fishing on the Columbia River). Three years later, New York and New Jersey enacted the first compact to create an interstate commission (now known as the Port Authority of New York and New Jersey).

Today, more than 260 interstate compacts directly regulate or guide policy for a diverse range of policy matters, including establishing state boundaries environmental protection, transportation systems, regional economic development, professional licensing, education, crime control and corrections, and child welfare. The U.S. Supreme Court has a history of encouraging states to resolve disputes through Compacts rather than litigation. *E.g., Vermont v. New York*, 417 U.S. 270, 277–78 (1974). A seminal law review article noted, “The combined legislative powers of Congress and of the states permit a wide range of permutations and combinations of power necessary for governmental action.” Felix Frankfurter & James M. Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 Yale L.J. 685, 688 (1925).

The ICAOS, like the 1937 Parole and Probation Compact, is integral to the longstanding and increasingly prevalent use of interstate compacts. Similar to its predecessor, the ICAOS addresses multilateral issues that extend beyond state boundaries.

7.2.1 Interstate Compacts are Formal Agreements Between States

Understanding the legal nature of an interstate Compact begins with this basic point: interstate compacts are *formal agreements between states* that exist simultaneously as both (1) statutory law, and (2) contracts between states. The contractual nature stems from the reciprocal enactment and adoption of substantially and substantively similar laws by sovereign state legislatures. There is (1) an offer (the presentation of a reciprocal law to two or more state legislatures), (2) acceptance (the actual enactment of the law by two or more state legislatures), and (3) consideration (the settlement of a dispute or creation of a joint regulatory scheme). See Buenger, et al., *supra*, at 42–48 (ABA Publ'g 2016). However, if a unilateral alteration clause exists within Compact language, the agreement generally may not rise to the level of a compact enforceable as a contract between the states. *Ne. Bancorp v. Bd. of Governors of Fed. Reserve Sys.*, 472 U.S. 159, 175 (1985).

Interstate compacts, federal statutes, and regulatory law are the only binding means of resolving interstate policy issues. Of those resolution methods, an interstate compact is the only formal mechanism that allows individual states to reach beyond their borders and collectively regulate the conduct of multiple states and their citizens. Compacts are also one of the only exceptions to the general rule that a sitting state legislature cannot irrevocably bind future state legislatures. Buenger, et al., *supra*, at 48. Compacts regulate matters aptly described as sub-federal, supra-state in nature. *Id.* at xxi. The binding nature of interstate compacts comes from their contractual character and judicial recognition that compacts must supersede conflicting state laws to be effective under applicable constitutional law.

7.2.2 Compacts Are Not Uniform Laws

An interstate compact differs fundamentally from a “uniform law” in its nature and application. Unlike uniform laws, which are not contractual in nature, interstate compacts are binding agreements between states. A state cannot selectively adopt provisions of an interstate compact or modify them to address only intra-state concerns. Additionally, once adopted, a state cannot unilaterally amend or repeal an interstate compact except as the language of the compact explicitly permits. *See, e.g., West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 28 (1951); *but see New York v. New Jersey* 598 U.S. 218, 224–25 (2023) (allowing New Jersey to unilaterally withdraw from the Waterfront Commission of New York Harbor compact because the compact was silent about withdrawal).

7.2.3 Compacts Are Not Administrative Agreements

Compacts differ from administrative agreements in two principal ways. First, states, as sovereigns, have inherent authority to enact compacts. *See Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657, 725 (1838). Thus, states do not need any express authority to enact a compact. In contrast, states must authorize agencies and executive officials to enact administrative agreements both intra and interstate. All states have such express authority in their constitutions, in generally applicable statutes, or in statutes that expressly authorize administrative agreements for specific purposes. These authorities commonly refer to administrative agreements as inter-local, intergovernmental, inter-municipal, or interagency agreements.

The second way that compacts differ from administrative agreements is that state legislatures enact compacts, whereas the executive branch enacts administrative agreements. However, the executive branch may enact a compact if the compact expressly authorizes executive enactment. For example, article VII(b)(1) of the Nonresident Violator Compact specifically authorizes, “Entry into the Compact shall be made by a Resolution of Ratification executed by the authorized officials of the applying jurisdiction . . . .” Also, courts do not enforce improperly enacted compacts. *E.g., Sullivan v. Pa. Dep’t of Transp.*, 708 A.2d 481, 485 (Pa. 1998) (Driver License Compact called for the legislature to enact reciprocal statutes; power to enact laws cannot be delegated to an executive agency and thus the compact was not “enacted” in Pennsylvania under an administrative agreement executed by state Department of Transportation even though authorized by statute to do so). In addition, administrative agreements enacted by the executive branches of state government may bind the executive entities, but those agreements do not have the same force and effect to bind a state legislature as statutorily enacted Compacts. *See, e.g., Gen. Expressways, Inc. v. Iowa Reciprocity Bd.*, 163 N.W.2d 413, 419 (Iowa 1968) (“We conclude the uniform compact herein was more than a mere administrative agreement and did constitute a valid and binding contract of the State of Iowa.”).

7.3. Delegation of State Authority to an Interstate Commission

One of the axioms of modern government is a state legislature's ability to delegate rulemaking power to an administrative body. This delegation of authority extends to the creation of an interstate commission through an interstate compact. *See Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 42 (1994); *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 28 (1951) (obligations imposed by an interstate commission pursuant to an interstate compact are enforceable on the member states). An interstate compact may also provide that its interstate commission may determine when member states breach obligations allowing for the imposition of sanctions on non-compliant states. *See, e.g., Alabama v. North Carolina*, 560 U.S. 300, 342–44 (2010) (interstate commission had such power but was not the sole arbiter of disputes regarding a state's compliance with the compact).

7.4 Congressional Consent Requirement

This section explains the impact of congressional consent and ICAOS.

7.4.1 When Consent is Required

The Compact Clause of the U.S. Constitution states, "No State shall, without the consent of Congress, . . . enter into any agreement or Compact with another State . . . ." U.S. Const. art. I, § 10, cl. 3. Though a strict reading of the Compact Clause might appear to require congressional consent for every compact, the Supreme Court has determined that "any agreement or Compact" does not mean every agreement or compact. The Compact Clause triggers only by those agreements that would alter the balance of political power between the states and federal government, intrude on a power reserved to Congress, or alter the balance of political power between the compacting states and non-compacting states. *Virginia v. Tennessee*, 148 U.S. 503, 519 (1893) (agreements "which may tend to increase and build up the political influence of the contracting States, so as to encroach upon or impair the supremacy of the United States . . . ."); *U.S. Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452, 495–96 (1978) (non-compact states placed at competitive disadvantage by the Multistate Tax Compact); *Ne. Bancorp v. Bd. of Governors of Fed. Reserve Sys.*, 472 U.S. 159, 176 (1985) (statute in question neither enhances the political power of the New England states at the expense of other states or impacts the federal structure of government).

PRACTICE NOTE

ICAOS operates under Congress' consent in the Crime Control Act of 1934, 4 U.S.C. § 112 (2012).

Where an interstate agreement facilitates only what states could accomplish unilaterally, the compact does not intrude on federal interests requiring congressional consent. *See U.S. Steel Corp.*, 434 U.S. at 472–78. The lack of requisite congressional consent, however, does not affect the contractual nature of the agreement between states.

Congress does not pass upon a compact in the same manner as a court decides a question of law. Congressional consent is an act of political judgment about the potential impact of the compact on national interests, not a legal judgment as to the correctness of the form and substance of the agreement. *See Detroit Int'l Bridge Co. v. Gov't of Canada,* 883 F.3d 895, 899 (D.C. Cir. 2018). Implied consent may exist when actions by the states and federal government indicate that Congress has granted its consent even in the absence of a specific legislative act. *See Virginia v. Tennessee*, 148 U.S. at 521–22.

Alternatively, Congress may attach conditions to its consent. Conditions can be proscriptive involving the duration of the agreement. Other congressional conditions may be compulsory, requiring member states to act in a certain manner before activation of the compact. On the other hand, conditions authored by Congress can be substantive, altering the purposes or procedures mandated by a Compact. The only limitation imposed on congressional conditions is that they must be constitutional. *New York v. United States*, 505 U.S. 144 (1992). Courts deem that states that adopt an interstate compact to which Congress attaches conditions have accepted those conditions as a part of the compact. *Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275, 277-78 (1959) (mandated provisions regarding suability of bridge commission as binding on states because Congress possessed the authority to impose conditions as part of its consent, and the states accepted those conditions by enacting the compact).

When states amend a compact with consent, Congress must assent to the amendment. However, there is no requirement for additional consent if the amendment is consistent with Congress' existing authority. *See, e.g.,* Joint resolution granting consent to amendments to the Compact between Missouri and Illinois, Pub. L. No. 112-71, 125 Stat. 775 (2011); *Int'l Union of Operating Eng'rs,*

7.4.2 Withdrawal and Modification of Congressional Consent

Once Congress grants its consent to a compact, the general view is that it may not be withdrawn. Although the matter has not been resolved by the U.S. Supreme Court, two federal circuit courts of appeal have held that congressional consent, once given, is likely not subject to alteration. *Tobin v. United States*, 306 F.2d 270, 273 (D.C. Cir. 1962) ("such a holding would stir up an air of uncertainty in those areas of our national life presently affected by the existence of these compacts. No doubt the suspicion of even potential impermanency would be damaging to the very concept of interstate compacts."); *Mineo v. Port Auth. of N.Y. & N.J.*, 779 F.2d 939 (3d Cir. 1985) (following *Tobin*).

Notwithstanding *Tobin* and *Mineo,* Congress specifically reserves the right to alter, amend, or repeal its consent as a condition of approval in many compacts. *See, e.g.*, Congress' consent to the Tahoe Regional Planning Compact, Pub. L. No. 96-551 § 7, 94 Stat. 3233, 3253 (1980). Another form of this reservation of congressional authority exists in Congress' consent to low-level radioactive waste disposal compacts, which states, "Each compact shall provide that every 5 years after the compact has taken effect the Congress may by law withdraw its consent." 42 U.S.C. § 2021d(d). Express reservations provide prior notice to the states, but no court decision has addressed whether these reservations are proper.

Notwithstanding the courts' concerns in *Tobin* and *Mineo*, Congress may legislate within the subject matter of a compact to which it has granted previous consent, which could have the effect of changing the landscape in which a compact operates or making a compact obsolete. Buenger, et al., *supra*, at 89; *Arizona v. California*, 373 U.S. 546, 565 (1963) (Congress is within its authority to create a comprehensive scheme for managing the Colorado River, notwithstanding its consent to the Colorado River Compact). There is one exception to this general rule regarding Congress' retained authority. Article IV of the U.S. Constitution guarantees the territorial integrity of the states; thus, once Congress consents to a state boundary compact, it may not subsequently adopt legislation undoing the states' agreement.

If Congress modifies a condition of its consent, the states would need to enact that modification into their compact. Buenger, et al., *supra*, at 89. There is no case law on this issue, but a compact requiring consent cannot be valid if it conflicts with Congress' conditions of consent.

7.4.3 Implications of Congressional Consent

Congressional consent can significantly change the nature of an interstate compact. “[W]here Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States’ agreement into federal law under the Compact Clause.” *Cuyler v. Adams*, 449 U.S. 433, 440 (1981). Although most clearly articulated in *Cuyler v. Adams*, the rule that congressional consent transforms the states’ agreement into federal law has been recognized since 1852. *See id.* at 438 n.7.

As federal law, disputes involving the application or interpretation of an interstate compact with congressional consent may be brought in federal court under 28 U.S.C. § 1331 (federal question jurisdiction), except where a compact specifically authorizes suit only in state court. Federal court jurisdiction is not exclusive; under the Supremacy Clause of the U.S. Constitution, state courts, similar to federal counterparts, have the same obligation to give force and effect to the provisions of a congressionally approved compact. The U.S. Supreme Court retains the final word on the interpretation and application of congressionally approved compacts no matter whether the case arises in federal or state court. *Delaware River Joint Toll Bridge Comm’n v. Colburn*, 310 U.S. 419, 427 (1940) (“[T]he construction of such a [bi-state] compact sanctioned by Congress by virtue of Article I, § 10, Clause 3 of the Constitution, involves a federal ‘title, right, privilege or immunity,’ which when ‘specially set up and claimed’ in a state court may be reviewed here on certiorari under § 237(b) of the Judicial Code.”).

PRACTICE NOTE

Because the ICAOS regulates the supervision of persons under the jurisdiction of state courts, most of the cases involving the ICAOS are in state court rather than federal court; however, federal claims involving application of the compact are commonly in federal court.

Courts apply the Supremacy Clause when there is a conflict between an interstate compact with consent and state law or state constitutions. *See, e.g., Hinderlider v. La Plata River & Cherry Ditch Co*., 304 U.S. 92, 108 (1938) (holding that states may, with congressional consent, enact compacts even if those compacts would conflict with rights granted under a state constitution); *Wash. Metro. Area Transit Auth. v. One Parcel of Land*, 706 F.2d 1312 (4th Cir. 1983) (Maryland may confer on an interstate agency federal quick-take condemnation powers not available to state agencies under Maryland’s constitution); *Jacobson v. Tahoe Reg’l Planning Agency*, 566 F.2d 1353, 1358 (9th Cir. 1977) (holding that “causes of action based on state constitutional provisions must fail because the Compact, as federal law, preempts state law.”); *Frontier Ditch Co. v. Se. Colo. Water Cons. Dist.*, 761 P.2d 1117, 1124 (Colo. 1998) (concluding, “Thus, to the extent that there might be some arguable conflict between [the Compact’s] Article VI B’s grant of exclusive jurisdiction to Kansas and the Colorado water court’s jurisdiction [granted in that state’s constitution], Article VI B is the supreme law of the land and governs the rights of the parties in this case.”).

PRACTICE NOTE

Article XIV of the Interstate Compact for Adult Offender Supervision specifies, "All Compacting States' laws conflicting with this Compact are superseded to the extent of the conflict." This provision applies to conflicts between the ICAOS and state

Because compacts are statutes and contracts, courts interpret interstate compacts in the same manner as interpreting ordinary statutes and by applying contract law principles.

PRACTICE NOTE

No court has explained when to apply statutory construction principles versus contract law principles when interpreting an interstate compact.

When determining whether a state or compact agency applied the compact in a permissible manner, courts generally apply a statutory construction approach. *See, e.g., Friends of the Columbia Gorge v. Columbia River Gorge Comm'n,* 213 P.3d 1164, 1170–74 (Or. 2009) As noted in section 7.4.3, for compacts with consent, courts apply federal law, including federal decisional law unless the consent statute or compact specifically makes state statutory, regulatory, or decisional law applicable. For compacts that do not have consent, courts apply state law.

When interpreting a compact to determine whether a party state is in breach of the compact, courts typically apply principles governing the interpretation of contracts. Where there is an ambiguity, courts apply contract interpretation principles such as negotiating history (*Oklahoma v. New Mexico*, 501 U.S. 221, 235 n.5 (1991)); course of performance (*Alabama v. North Carolina*, 560 U.S. 330, 346 (2010)); usage of trade (*Id.* at 341–42 (considering compacts that received contemporaneous consent); *Tarrant Reg'l Water Dist. v. Herrmann*, 569 U.S. 614, 633 (2013) (considering compacts of the same subject matter, but not receiving consent contemporaneously)); and other principles (*New York v. New Jersey* 598 U.S. 218, 224–25 (2023) (withdrawal permitted at any time from an indefinite contract with no provision for withdrawal). In applying contract law principles, courts recognize that a compact represents a political compromise between "constituent elements of the Union" in contrast with a commercial transaction. For example, the Eighth Circuit states in one case:

> While a common law contract directly affects only the rights and obligations of the individual parties to it, an interstate compact may directly impact the population, the economy, and the physical environment in the whole of the compact area. A suit alleging that a state has breached an obligation owed to its sister states under a congressionally approved interstate compact also raises delicate questions bearing upon the relationship among separate sovereign polities with respect to matters of both regional and national import.

Entergy Arkansas, Inc. v. Nebraska, 358 F.3d 528, 541–42 (8th Cir. 2004). Consequently, the right to sue for breach of the compact differs from a right to sue for breach of a commercial contract; it arises from the compact, not state common law.

Courts generally strive to interpret and apply a compact uniformly throughout the states where the compact is effective. *See, e.g., In re C.B.*, 116 Cal. Rptr. 3d. 294, 295 (2010) (stating, "One of the key elements of any interstate Compact is uniformity in interpretation."). To achieve a uniform interpretation, courts commonly look to other courts decisions; however, there is often no uniformity. *E.g., id.* at 294–95 (looking at a dozen other state and federal court decisions and finding no uniformity); *Proctor v. Wash. Metro. Area Transit Auth.*, 990 A.2d 1048 (Md. (2010);*State v. Springer*, 406 S.W.3d 526 (Tenn. 2013); *A.G. v. Cabinet for Health & Fam. Servs.*, 621 S.W.3d 424 (Ky. 2021); *Afanasieva v. Wash. Metro. Area Transit Auth.*, 588 F. Supp. 3d 99, 107 (D.D.C. 2022);

7.6 Application of State Law that Conflicts with an Interstate Compact

Where state law and a compact conflict, courts are required under the Supremacy Clause (for compacts with consent) and as a matter of contract law to apply the terms and conditions of the compact to a given case. The fact that a judge may not like the effect of a compact or believes that other state laws can produce a more desirable outcome is irrelevant. The compact controls over individual state law and must be given full force and effect by the courts. For a full discussion of giving compacts effect over conflicting state law, see Buenger, et al., *supra*, at 54–66.

Many compacts are silent about how states may apply their own state law. In cases involving such compacts, courts use different analyses that generally reach the same holding. For example, the Ninth Circuit held that states may not apply state law unless the specific state law to be applied is specifically preserved in the compact. *Seattle Master Builders Ass'n v. Pac. Nw. Elec. Power & Conserv. Planning Council*, 786 F.2d 1359, 1364 (9th Cir. 1986). Similarly, states do not have the unilateral right to exercise a veto over actions of an interstate commission created by a compact:

> [W]hen enacted, a compact constitutes not only law, but a contract which may not be amended, modified, or otherwise altered without the consent of all parties. It, therefore, appears settled that one party may not enact legislation which would impose burdens upon the compact absent the concurrence of the other signatories. *C. T. Hellmuth & Assocs., Inc. v. Washington Metro. Area Transit Auth.*, 414 F. Supp. 408, 409 (D. Md. 1976).

Some compacts with just two or a few member states specifically allow states to apply new state law to a compact provided that the other member states concur with applying that law. Most courts reason that the concurrence of other member states occurs when all of the states enact substantively identical law and express an intent that the law applies to a specific Compact. *E.g., Int'l Union of Operating Eng'rs, Local 542 v. Delaware River Joint Toll Bridge Comm'n*, 311 F.3d 273 (3d Cir. 2002) (citing cases and also noting New Jersey state courts use a less demanding analysis).

Occasionally, courts invoke the Contracts Clause of the U.S. Constitution in analyzing whether a state may apply its own law to a compact. *See, e.g., U.S. Trust Co. v. New Jersey*, 431 U.S. 1, 32 (1977). Some courts use a contractual analysis without reference to the Contracts Clause of the federal or any state constitution. *E.g., McComb v. Wambaugh*, 934 F.2d 474, 479 (3d Cir. 1991). ("Having entered into a contract, a participant state may not unilaterally change its terms. A compact also takes precedence over statutory law in member states.").

By entering into a compact, the member states contractually agree that the terms and conditions of the compact supersede parochial state considerations. In effect, compacts create collective governing tools to address multilateral issues and, as such, they govern the multilateral contingent on the collective will of the member states, not the will of any single member state. This point is critically important to the success and uniform application of the ICAOS. Compacts are ultimately more successful when states enact statutes and regulations to support them.

PRACTICE NOTE

Most compacts expressly preserve some state law or state authority, and states frequently enact statutes and regulations that support and complement their administration of a compact.

7.7 Special Considerations for Litigation Involving Interstate Compacts

This section discusses considerations to when litigation involves interstate Compacts.

7.7.1 Relief Must Be Consistent with the Compact

In *Texas v. New Mexico*, the Supreme Court sustained exceptions to a Special Master's recommendation to enlarge the Pecos River Compact Commission, holding that one consequence of a compact becoming "a law of the United States" is that "no court may order relief inconsistent with its express terms." 462 U.S. 554, 564 (1983). The Court emphasized this principle in New Jersey v. New York, 523 U.S. 767, 811 (1998), stating, "[U]nless the Compact . . . is somehow unconstitutional, no court may order relief inconsistent with its express terms, no matter what the equities of the circumstances might otherwise invite." Although these cases were original jurisdiction cases in the U.S. Supreme Court, other courts applied this principle to consider appropriate relief in cases involving interstate commissions and states' application of Compacts. *E.g., New York State Dairy Foods v. Ne. Dairy Compact Comm'n*, 26 F. Supp. 2d 249, 260 (D. Mass. 1998), aff'd, 198 F.3d 1 (1st Cir. 1999); *HIP Heightened Independence & Progress, Inc. v. Port Auth. of N.Y. & N.J.*, 693 F.3d 345, 357 (3d Cir. 2012).

Where the compact does not articulate the terms of enforcement, courts have wide latitude to fashion remedies that are consistent with the purpose of the compact. In a later *Texas v. New Mexico* 482 U.S. 124, 128 (1987) proceeding, the Supreme Court has opined, "By ratifying the Constitution, the States gave this Court complete judicial power to adjudicate disputes among them . . . and this power includes the capacity to provide one State a remedy for the breach of another." The Court further notes, "That there may be difficulties in enforcing judgments against States counsels caution but does not undermine our authority to enter judgments against defendant States in cases over which the Court has undoubted jurisdiction, authority that is attested to by the fact that almost invariably the 'States against which judgments were rendered, conformably to their duty under the Constitution, voluntarily respected and gave effect to the same.'" *Id.* at 130–31; *see also Kansas v. Nebraska*, 135 S. Ct. 1042, 1052–53, 1057 (2015) (stating that within the limits of *Texas v. New Mexico*, "the Court may exercise its full authority to remedy violations of and promote compliance with the agreement, so as to give complete effect to public law" and allowing a disgorgement remedy not specified in the compact).

7.7.2 Eleventh Amendment Issues for Interstate Commissions

The Eleventh Amendment guarantees state sovereign immunity from suit in federal court. The Eleventh Amendment ensures that states retain certain attributes of sovereignty, including sovereign immunity. *Hans v. Louisiana*, 134 U.S. 1, 13 (1890). Over the years, the U.S. Supreme Court has established a clear approach to determining whether an interstate commission is a "state" or political subdivision thereof such that it enjoys immunity under the Eleventh Amendment; or, if through participation in a compact, states waived immunity. Now, however, the application of the Eleventh Amendment immunity to interstate commissions is well established. In *Petty v. Tennessee-Missouri Bridge Commission*, 359 U.S. at 277-78, the Supreme Court has opined that the text of the compact stating that the Bridge Commission should have the power "to contract, to sue and be sued in its own name," and Congress' grant of consent to the compact, stating "that nothing herein contained shall be construed to affect, impair, or diminish any right, power, or jurisdiction of the United States or of any court, department, board, bureau, officer, or official of the United States, over or in regard to any navigable waters . . . " effectively abrogates the states' Eleventh Amendment immunity by reserving the jurisdiction of the federal courts. 359 U.S. at 277 (1959).

In *Hess v. Port Authority Trans-Hudson Corp* 513 U.S. 30, 52 (1994), the Supreme Court has determined that when the factors the Court considers in determining whether the Eleventh Amendment applies point in different directions, the Eleventh Amendment's "twin reasons for being"—(1) respect for the dignity of the states as sovereigns, and (2) the "prevention of federal-court judgments that must be paid out of a State's treasury" should be the court's prime guide. 513 U.S. 30, 47-48 (1994).

There are many different actors involved with administering the ICAOS—the Interstate Commission, state agencies and officials, and local agencies and officials. Local agencies and officials do not enjoy Eleventh Amendment Immunity and a suit may be brought against them in federal court. *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977). However, the Eleventh Amendment may apply to the Interstate Commission and state agencies and actors. The "sue and be sued" provisions in Articles III and IV of the ICAOS may constitute a state waiver of immunity from suits against the Interstate Commission in state courts, but it does not necessarily constitute a waiver of Eleventh Amendment immunity against suits in federal courts. *See, e.g., Fla. Dep't of Health and Rehab. Servs v. Fla. Nursing Home Assoc.*, 450 U.S. 147, 150 (1981); *Trotman v. Palisades Interstate Park Comm'n,* 557 F.2d 35, 39-40 (2d Cir. 1977). Arguably, the ICAOS evidences intent by the states to be financially and administratively responsible for the actions of the commission, which may provide Eleventh Amendment immunity under the test articulated in Hess 513 U.S. at 47-48. Article VI.D of the ICAOS provides that the Commission "shall defend the Commissioner of a Compacting State, or his or her representatives or employees, or the Commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities[.]" The ICAOS requires the commission to indemnify and hold harmless a commissioner, appointed designee or employees, or the commission's representatives or employees in the amount of any settlement or judgment arising out of actual or alleged errors, acts or omissions that are within the scope of the commission's duties or responsibilities.

Even if the Eleventh Amendment does not offer protection, the commission may be immune from suit governed by non-Eleventh Amendment considerations. For example, in *Morris v. Washington Metropolitan Area Transit Authority*, the court has determined that a bare "sue and be sued" clause extends only as far as other more specific partial waivers in the Compact, not

7.8 Party State, Interstate Commission, and Third-Party Enforcement of Compacts

Some compacts authorize their interstate commission to seek judicial action to enforce the compact against a party state. Article XII.C of the ICAOS is a good example. *See Interstate Comm'n for Adult Offender Supervision v. Tennessee Bd. of Prob. & Parole*, No. 04-526-KSF (E.D. Ky. June 13, 2005) (permanent injunction). In general, however, claims for breach of a compact typically involve one party state filing an action against another party state in the U.S. Supreme Court under the Court's original jurisdiction in Article III, Section 2 of the U.S. Constitution and 28 U.S.C. § 1251(a). *See, e.g., Texas v. New Mexico*, 462 U.S. 554, 564 (1983). However, an interstate commission may join a party state as a plaintiff in an original jurisdiction action provided that it makes the same claims and seeks the same relief or its claims are wholly derivative of the plaintiff states' claims. *Alabama v. North Carolina*, 560 U.S. 330, 352–57 (2010).

Many cases involve third parties seeking to enforce a compact, but the issue whether a third party may enforce a compact arises only occasionally. *E.g., Medieros v. Vincent,* 431 F.3d 25 (1st Cir. 2005) (commercial fisherman sought to enforce the Atlantic States Marine Fisheries Compact against a state). In some cases, courts expressly conclude that third parties may enforce the compact. *E.g., Borough of Morrisville v. Del. River Basin Comm'n*, 399 F. Supp. 469, 472 n.3 (E.D. Pa. 1975) (allowing several municipalities to challenge a DRBC resolution that imposed a charge for consumptive use of water, reasoning, "to hold that the compact is an agreement between political signatories imputing only to those signatories standing to challenge actions pursuant to it would be unduly narrow in view of the direct impact on plaintiffs and other taxpayers.").

Two U.S. Courts of Appeals have held that there is no indication from the text and structure of the prior ICPP and the ICAOS that the compacts intended to create new individual rights. In addition, there is no basis for a private suit, whether under section 1983 or under an implied right of action to enforce the Compact. *See, e.g., Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95, 103 (3d Cir. 2008) (interpreting the ICPP); *M.F. v. N.Y. Exec. Dep't Div. of Parole*, 640 F.3d 491, 495 (2d Cir. 2011) (interpreting the ICAOS); *Lucero v. Pennella*, No. 1:18-cv-01448-LJO-SAB, 2019 WL 3387094 (E.D. Cal. July 25, 2019); *Cooper v. Pritzker*, No. 21-cv-00165-LTB-GPG, 2021 WL 11470756 (D. Colo. Feb. 25, 2021).

PRACTICE NOTE

Courts do not always analyze compacts for implied enforcement by third parties, which suggests that parties and courts generally recognize third parties' actions, unless there is good reason to believe that third parties may not bring actions. However, recent case law clarifies that absent language showing an intent to create individual rights such rights will not be implied.

7.9 Recommended Sources of Compact Law and Information

For additional information on interstate compact law and interstate compacts generally, see Michael L. Buenger, et al., T*he Evolving Law and Use of Interstate Compacts 2d* ed. (ABA Publ'g 2016), and Jeffrey B. Litwak, Interstate Compact Law: Cases and Materials 4th ed. (Semaphore Press 2020). Two ABA publications have published annual new developments in interstate compact law for many years. Between 2007 and 2019, the annual update was part the annual *Developments in Administrative Law and Regulatory Practice* book. Beginning in 2020, the annual update has appeared in *The Urban Lawyer*.

The Council of State Governments, National Center for Interstate Compacts, has a database of all current compacts and other information about compacts on its website, https://compacts.csg.org.

For historical context on interstate Compacts, see Felix Frankfurter & James M. Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 Yale L.J. 685 (1925).

For historical context on compacts and as applicable to transfer of supervision of individuals on probation and parole under the ICAOS, see Michael L. Buenger & Richard L. Masters, *The Interstate Compact on Adult Offender Supervision: Using Old Tools to Solve New Problems,* 9 ROGER WILLIAMS U. L. REV. 71 (2003), and James G. Gentry, *The Interstate Compact for Adult Offender Supervision: Parole and Probation Supervision Enters the Twenty-First Century,* 32 MCGEORGE L. REV. 533 (2001).

For a report on interstate compact agencies and good governance, see U.S. Gov't Accountability Office, No. GAO-07-519, *Interstate Compacts: An Overview of the Structure and Governance of Environment and Natural Resource Compacts (2007).*