

## White Paper

### Legal Implications of the Interstate Compact Offender Tracking System (ICOTS)

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At the request of the Interstate Commission for Adult Offender Supervision's (ICAOS) Executive Committee, the following legal analysis has been prepared in order to serve as a resource documenting the legal implications of the Interstate Compact Offender Management System (ICOTS). This is in response to questions raised by member states regarding the use of ICOTS records as official court documents. One of the ways in which states seek to use this information is as an exception to the hearsay rule under the federal rules of evidence or similar provisions of the state court rules of civil procedure. However, business records are a recognized exception to the hearsay rule.

To fully grasp the business records exception, you must first understand the **hearsay rule**, which generally forbids out-of-court statements that are offered for the truth of the matters asserted. Many jurisdictions model their hearsay rules and business records exception (partially or fully) on **Rules 801-807 of the Federal Rules of Evidence (FRE)**. Under the FRE, a document is inadmissible hearsay unless it qualifies as an exclusion or exception to the hearsay rule. For that reason (and others), understanding the business records exception is **critical** for anyone considering taking a case to trial. However, each jurisdiction may have its own version of the hearsay rule and business records exception. Therefore, proper use of the records exception requires that compact administrators are familiar with rules particular to their jurisdiction regarding how to properly introduce an exhibit into evidence as an exception to the hearsay rule.

Under the Federal Rules of Evidence, a party must show that:

- The record was **made by a person with knowledge** of the information contained in it;
- The record was **made at or near the time of the event**;
- It was the business' **regular practice to make these types of records**; and
- The record was **kept in the course of a regularly conducted activity**.

Thus, it is essential that compact administrators and others responsible for managing and using information from ICOTS understand the nature of the information and the state who is determined to be the custodian. In addition, the above-referenced criteria require a determination of which state is the custodian of the ICOTS records concerning a particular offender. Moreover, it may be advisable for the custodian to prepare a business records affidavit as the custodian of ICOTS records that are maintained in a database established under the authority of the provisions of the Interstate Compact for Adult Offender Supervision.

As an example, such an affidavit could include a brief description of the ICOTS data system and that the information concerning the offender in question is a product of criminal justice case history provided by both the sending state from which the offender transfers and the receiving state of current residence. In addition, the affiant may also document that production of the relevant record occurred at or near the time of processing of the compact transfer request.

It is also essential to understand that data pulled on a compact activity PDF(s) is updated and current when created. The compact activity PDF(s) generate when the user clicks on them within the ICOTS application. While subsequent 'users' may make additional entries or assume responsibility for an ICOTS record, authorization of an ICOTS user account occurs in advance and may be used to identify user entries or changes. Additionally, best practices conveyed through training may involve additional notation of sufficient identifying information including the time and date of the entry to establish a 'chain of custody' or more accurately a 'chain of data entries.' Additions or changes to records received typically add information such as new aliases, new SSNs, new state IDs or even a different name if a

state compact administrator makes a clerical edit to correct an error. Because an assigned officer modifying the PDF(s) may be different from the officer that created the initial compact case record, edits should include contemporaneous identifying information so that a business records affidavit may trace the 'chain of edits to data entries.' Creation of the edit chain is critical to court proceedings where the reliability of information and changes to a record is in question.

It is important for compact offices to establish that it is the regular practice of ICAOS compact administrators to produce these types of records and that the preparation of these records occurs in the "regular course of business" based upon compact rules and policies. In addition to the records and processes outlined above, compact offices may describe the ICOTS system as follows:

*ICOTS is the nationwide electronic information system of the ICAOS. The system is used by all states to track offenders who are authorized to travel or relocate across state lines. The system is also used to share information regarding offender movement under the rules of the interstate compact. In addition to serving as the main communication tool for processing compact transfer requests, ICOTS serves as a clearinghouse for compact offender information. ICOTS data is accessible as either active case information or as an historical record.*

The Compact provides that:

*The Interstate Commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules, which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. See ICAOS, Article VII.*

However, nothing in the foregoing text expresses or implies that any such data collected is the property of the Interstate Commission. In fact, it is clear from the language of Article I, in which the Purpose of the Compact is set forth, that it is "the compacting states to this Interstate Compact" that have responsibility for the supervision of the adult offenders subject to the compact; and, that responsibility derives from "joint and cooperative action" including the creation of ". . . a system of uniform data collection, access to information on active cases by authorized criminal justice officials. . ." See Article I.

Consistent with the above compact provisions, Section I of the ICAOS Administrative Policy (02-2009) Record Retention and Destruction Policy provides:

*All offender records and case information entered in ICOTS by member states **is the property of the member states and is maintained according to the laws and policies of the member states.** ICOTS entries and attachment will not be disposed of without the express written permission of the member state that provided the information. [Emphasis Added]*

The Commission acts consistently with this policy and the above compact provisions. It has not made use of the ICOTS data, except as directed by the compact member states, that continue to own the information furnished in ICOTS. Moreover, since the compact states are the 'owners' of the information that is submitted to ICOTS, the compact states are responsible for the accuracy of the data and are best able to vouch for its reliability.

Accordingly, for the purpose of furnishing a 'business records affidavit' or testimony concerning the reliability of such information that it is customarily reported, retained, and exchanged with other

compact state concerning offenders transferred under the compact, it is the state that furnished the ICOTS information about the offender in question that should be considered the 'custodian' of such records. The furnishing state should provide the required affidavit.