INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

ADVISORY OPINION

At Issue

Whether an individual sentenced to two years in Maryland's Home Detention Program, or a comparable program in another state, is subject to the Compact the period in which the home detention terms are in effect.

Requesting State: Florida

Issued By:

Harry Hageman, Executive Director
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At Issue

Whether an individual sentenced to two years in Maryland's Home Detention Program, or a comparable program in another state, is subject to the Compact during the period in which the home detention terms are in effect.

Issued by: Harry E. Hageman, Executive Director & Richard L. Masters, Legal Counsel

Background

According to the Florida, an individual convicted in Maryland for common law battery relocated to Florida immediately after sentencing in 2013. The sentencing court imposed two years in Maryland's Home Detention (HDP), followed by five years of probation. Maryland did not notify Florida of the individual's relocation or presence during the HDP period (09/30/2013–09/01/2015). After the two-year HDP term concluded, Maryland submitted a discretionary transfer request, noting that the individual was a Florida resident who should not remain unsupervised. Florida questioned why no transfer request was made at the time of relocation in 2013 at the start of HDP. Maryland responded that it considered the individual an "inmate" during HDP term and therefore did not seek transfer.

Maryland describes HDP, enacted by its legislature in 1990, as a program allowing eligible incarcerated individuals to serve the end of their sentences in the community under electronic monitoring, telephonic verification, and random checks by correctional staff. Florida disputes Maryland's characterization, asserting that individuals in HDP meet the Compact's definition of a "supervised individual," and therefore require transfer when relocating with at least ninety days remaining in the program. Florida also notes that, if subject to the Compact, its supervision officers would conduct the required field contacts.

Applicable Rules

Rule 1.101, Definitions:

> 'Supervised Individual' means an "offender" defined by Article II of the Interstate Compact for Adult Offender Supervision as an adult placed under, or made 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 required to request transfer of supervision under the Compact."

'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.

Rule 2.106 Supervised Individuals Subject to Deferred Sentences:

(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 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.

Analysis

The individual at issue was convicted of a criminal offense and released to the community under conditions of Maryland's HDP, which includes electronic monitoring, voice verification, and random checks. This case clearly involves an adult "convicted of a criminal offense and released to the community" under the terms of his sentence. These conditions and the HDP's clear requirements that individuals be "monitored by supervising authorities" meet the Compact's definitions of a "supervised individual" and "supervision" under Rule 1.101. Although Maryland characterizes HDP participants as "inmates," they are not incarcerated; rather, they remain in the community subject to court-ordered conditions that must be successfully completed as part of the sentence.

Eligibility under the Compact is not determined by a state's terminology, but is instead established by the actions of the sentencing court. *See* Advisory Opinion 06-2005 (Rule 2.106 applies here, we are considering the action actually taken by the supervised individual and the court rather than the label used by the legislature). Rule 2.106 makes clear that individuals remain eligible for Compact supervision when the court has entered a conviction (or accepted a plea) and imposes a conditional release, regardless of whether the sentence is suspended, stayed, or may later be dismissed or expunged upon program completion. *See also id.*

Because the individual in this case was convicted of a criminal offense and was conditionally released to the community under the terms of the sentence imposed by the court—which includes successful completion of two years in the HDP—he is a “supervised individual” for purposes of the Compact. This is further confirmed by the active oversight exercised over the individual within the program. Because of this compliance requirement, the individual in question is subject to the Compact and is required to seek transfer before relocating to Florida.

Conclusion

An individual convicted in Maryland and released to the community to complete HDP, or a comparable conditional-release program in another state, who relocates to another state with 90 days or more remaining in the program is subject to the Compact.