

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

ADVISORY OPINION

At Issue

Whether a supervised individual whose supervision was never transferred under the Compact and who subsequently absconds supervision is subject to the of the Compact and ICAOS rules and may the State from which the individual absconded return the individual under the Compact or is the Extradition Clau the U.S. Constitution the only means by which such an absconder may be returned?

Requesting State: California

Issued By:

Harry Hageman, Executive Director
Rick Masters, General Counsel

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Whether a supervised individual whose supervision was never transferred under the Compact and who subsequently absconds supervision is subject to the terms of the Compact and ICAOS rules and may the State from which the individual absconded return the individual under the Compact or is the Extradition Clause of the U.S. Constitution the only means by which such an absconder may be returned?

Issued by: Executive Director-Harry Hageman and Chief Legal Counsel: Richard L Masters

Background

A California supervised individual absconded supervision after being placed on probation for a felony conviction. Due to the unknown whereabouts of the individual the probation status was subsequently revoked, and a California-only warrant was issued by the Courts.

Several years later the probation officer assigned to the case became aware that the individual was residing in the State of Montana. The supervised individual was never authorized to relocate from California to Montana nor was a transfer request ever initiated. When the probation officer requested to upgrade the California-only warrant the Court refused on the grounds that the individual is deemed a fugitive and cannot be returned under the Compact.

The State of California has requested an advisory opinion concerning the applicability of the Compact and ICAOS rules, including Rule 2.110, to return an individual who was never transferred under the compact and later absconded.

Applicable Constitutional Provisions, Rules, and Statutes

Article IV, Section 2 of the United States Constitution provides as follows:

> “A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.”

Article I of the Interstate Compact for Adult Offender Supervision provides in relevant part:

“The compacting states to this Interstate Compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the Bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdiction.”

Rule 2.110 Transfer of supervised individuals under this compact:

(a) No state shall permit a supervised individual who is eligible for transfer under this compact to relocate to another state except as provided by the Compact and these rules.

1. If a supervised individual is in the receiving state without proper approval, the sending or receiving state shall immediately notify each other.
2. Upon confirmation that a supervised individual is in the receiving state without proper approval, the sending and receiving states may mutually agree to allow the supervised individual to remain in the receiving state and issue reporting instructions while the investigation is completed. If an agreement is not reached, the sending state shall direct the individual to return to the sending state within 15 business days.
3. If the supervised individual does not return to the sending state as ordered, the sending state shall issue a warrant no later than 15 business days following the individual’s failure to appear in the sending state.

(b) A supervised individual who is not eligible for transfer under this Compact is not subject to these rules and remains subject to the laws and regulations of the state responsible for supervision.

Rule 3.101(c) Mandatory transfer of supervision

At the discretion of the sending state, a supervised individual shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the supervised individual:

(c) is in substantial compliance with the terms and conditions of supervision in the sending state

Analysis

It is clear from the foregoing provisions of the Constitution, the Compact and ICAOS Rules that "extradition" under the federal Constitution and "retaking" under the Compact are not one and the same. Article IV, Section 2 of the Constitution only applies to a person who has been "charged in any state with treason, felony, or other crime" and "who shall flee from Justice, and be found in another state."

In contrast, supervised individuals transferred from one state to another under the Interstate Compact for Adult Offender Supervision have clearly not fled from justice and are lawfully in the receiving state pursuant to the terms of the Compact and ICAOS rules, including Rule 2.110.

A number of federal and state courts decisions have distinguished "extradition" from "retaking" based on the foregoing provisions of the Constitution and the Interstate Compact and have recognized that these terms represent two distinct legal processes. See for example, I*n 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 SWo.2d 584 (Fla. 1st DCA 1982)* ('[W]hen a person is paroled to another state pursuant to an interstate compact, all requirements to obtain extradition are waived."). An interstate compact has been held to displace the Uniform Criminal Extradition and Rendition Act (UCERA) as to certain individuals convicted of crimes and requires only minimal formalities as to the return of those individuals. Id. Furthermore, the supervised individual's agreement to waive extradition as a condition of relocating waives the need for formal extradition proceedings upon demand by the sending state that a supervised individual be returned. Cf., *Wymore v. Green, 245 Fed. Appx. 780, 2007 WL 2340795 (10th Cir. 2007)* ('plaintiff's waiver of extradition renders any formal request or permission from the requesting and sending state governors unnecessary. In fact, the effect of the above referenced Compact provisions on the extradition clause of the U.S. Constitution, in effect creating an alternative to extradition, is a primary reason why Congressional consent to the Compact was necessary. See *Cuyler v. Adams, 449 U.S. 433 (1981)*. Having obtained such consent both the provisions of the Compact and the ICAOS rules have the status of federal law. See *Texas v. New Mexico, 482 U.S. 124 (1987).*

Notwithstanding the legal distinction between extradition and retaking, it is important to emphasize that once supervision of a supervised individual is transferred to a receiving state under the terms of ICAOS Rule 3.109, the waiver of extradition signed by an individual applying for interstate transfer under the compact applies not only to return or retaking from the receiving state but also to return or retaking from "any state to which the individual may abscond . . ." This waiver is required as a condition of transferring supervision and the validity of such a waiver has been judicially recognized. See *Evans v. Thurmer, 278 Fed. Appx. 679, 2008 WL 2149840 (7th Cir. 2008)., O'Neal v. Coleman, 2006 U.S. Dist. LEXIS 40702 (W.D. Wis. June 16, 2006; also Johnson v. State, 957 N.E.2d 660 (Ind. App. 2011)*.

The waiver of extradition outlined in ICAOS Rule 3.109 applies to any member state where the supervised individual may be located. Under Rule 3.109, authorities are not limited in their pursuit of fugitives or in returning a fugitive to the sending state, although they may be required to present evidence that the fugitive is the person being 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).*

However, in order for the sending state to avail itself of this alternative to extradition, and for the Compact and ICAOS rules to apply, the supervision of the individual must have been properly transferred to the receiving state under the jurisdiction of the Compact. While ICAOS Rule 2.110 (a) prohibits relocation of a supervised individual "who is eligible for transfer under this compact except as provided by the Compact and these rules," this requirement must be read and interpreted consistently with Rule 2.110 (b) which provides that a individual **who is not eligible for transfer under this Compact is not subject to these rules and remains subject to the laws and regulations of the state responsible for the individual's supervision." Moreover, 'eligibility'** for transfer of supervision under ICAOS Rule 3.101 (c) also requires that the supervised individual **"is in substantial compliance with the terms of supervision in the sending state.**" (emphasis added).

In this case, California clearly states that, "The supervised individual was never authorized to relocate from California to Montana nor was a transfer request ever initiated." Even if an application for transfer of supervision under the Compact was filed the individual, having absconded from supervision in California, would not be 'eligible' for transfer under Rule 3.101 (c). Since the individual's supervision was never transferred to a receiving state under the Compact and no application for transfer or waiver of extradition ever occurred, neither the Compact nor the ICAOS rules apply to this individual and as a 'fugitive from justice,' having absconded from probation in California, must be returned under the extradition clause of the U.S. Constitution.

Conclusion

Where jurisdiction over a parolee or probationer is vested in the compact transfer process, as provided under the Compact and ICAOS Rules, the Constitutional provisions concerning extradition need not apply. If the supervised individual was transferred into the state under the provisions of the interstate compact, then the return of the individual, even in the case of an absconder, is properly accomplished pursuant to the provisions of the Compact and its duly authorized rules and regulations.

However, when the individual's supervision was never transferred to a receiving state under the Compact and no application for transfer or waiver of extradition ever occurred, neither the Compact nor the ICAOS rules apply to this individual who, as a 'fugitive from justice' having absconded from probation in California, must be apprehended and returned under the

extradition clause of the U.S. Constitution.