INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

ADVISORY OPINION

At Issue

Does a receiving state's acceptance of a transfer request under Rule 3.105(a), or approval of reporting instructions, create or determine a supervised individ release date from custody?

Requesting State: Arizona

Issued By:

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Does a receiving state's acceptance of a transfer request under Rule 3.105(a), or approval of reporting instructions, create or determine a supervised individual's release date from custody?

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

Background

Whether a receiving state's acceptance of a transfer request under ICAOS Rule 3.105(a), or its approval of reporting instructions, can trigger the release of a supervised individual from a correctional facility who would otherwise remain incarcerated. Arizona notes that several states, including Arizona, have interpreted Rule 3.105(a) to mean that the receiving state's acceptance or approval of reporting instructions establishes the individual's "planned release date." Examples include court or parole documents stating:

- "Parole out of state only to [receiving state]"
- "Interstate Compact to [receiving state] only"
- "Release only after receiving state acceptance"
- "Jail term of 120 days; may be released early only if receiving state accepts the transfer"

These types of conditions have led to confusion as to whether acceptance under Rule 3.105(a) authorizes or triggers early release.

Applicable Rules and Statutes

Rule 3.105: Pre-Release Transfer Request

> (a) A sending state may submit a completed request for transfer of supervision no earlier than 120 calendar days prior to a supervised individual's planned release from a correctional facility.

Rule 3.105 allows the sending state to submit a completed transfer request up to 120 days before the planned release date. The rule assumes a release date already exists under state law or authority.

Rule 4.102: Duration of Supervision in the Receiving State

> A receiving state shall supervise individuals transferred under the interstate compact for a length of time determined by the sending state.

Rule 4.102 provides that the sending state retains exclusive control over the duration of supervision, including when it begins and ends.

Analysis

Accepting a transfer request or approving reporting instructions does not establish a supervised individual's release date. Rule 3.105(a) presupposes that the sending state has already determined the individual's release date in accordance with its own laws, court orders, and releasing authorities. Nothing in Rule 3.105 authorizes a receiving state to create, advance, or modify that date.

Reporting instructions simply allow an individual who is lawfully released to travel and report to the receiving state. They do not grant authority to release earlier than permitted by the sending state's legal and correctional processes. Moreover, allowing acceptance or reporting instructions to determine an individual's release date would also conflict with Rule 4.102. If acceptance triggered release, a receiving state would effectively influence when supervision begins, which Compact Rules clearly do not permit.

Although certain sending states may elect to condition an individual's release on the receiving state's willingness or ability to accept a transfer, that determination rests solely with the sending state. Release decisions are exclusively within the control of the sending state's courts, statutes, and releasing authorities. The Compact does not confer upon ICAOS or any receiving state the power to establish, modify, or accelerate an individual's release date, nor to influence sentencing, incarceration terms, or parole eligibility. These matters lie entirely within the jurisdiction of the sending state and its corresponding substantive law and procedure.

Conclusion

Under Rule 3.105(a), neither the receiving state's acceptance of a transfer request nor the approval of reporting instructions may be used as the basis for determining or altering an individual's release date from a correctional facility. Although a sending state may choose, as a matter of its own policy or release procedures, to predicate an individual's release on the receiving state's willingness or ability to accept the transfer, that decision remains exclusively within the authority of the sending state.